

## Impact of Bad Construction Practices on Mature Neighbourhoods

### Recommendation:

That the September 15, 2015, Sustainable Development report CR\_2698, be received for information.

### Report Summary

**This report outlines the current rules and practices, upcoming changes to practices, opportunities to collaborate with industry partners, and research into other municipalities governing construction practices in mature neighbourhoods.**

### Previous Council/Committee Action

At the September 15/18, 2015, Executive Committee meeting, the following motion was passed:

That the September 15, 2015, Sustainable Development report CR\_2698 be postponed to the October 5/6, 2015, Executive Committee meeting, and that Administration work with the Agenda Review Committee to schedule a time for the item.

At the July 7, 2015, City Council meeting, the following motion was passed:

That Administration provide a report outlining:

- the current rules, regulations and guidelines governing the impact of construction in existing neighbourhoods on neighbouring properties, including noise, debris, damage to other party (public and private)
- our current practice in ensuring good neighbour behaviour during construction in existing neighbourhoods
- what tools could we add to ensure more respectful construction in existing neighbourhoods including but not limited to:
  - a. requiring a copy of the Building and Development Permits as well as any conditions and contact information for the permit holder and the constructor be prominently displayed on site so as to be visible from the street
  - b. identifying existing and new opportunities to strengthen communication and enforcement of good construction practices in Edmonton
  - c. requiring a bond before construction begins
  - d. requiring neighbourhood agreements between builders and neighbours as part of the development and building permit process in established neighbourhoods
  - e. exploring opportunities to collaborate with the Canadian Home Builders'

- Association and Infill Development in Edmonton Association to increase the standard of construction and products used in existing neighbourhoods
- f. developing a certification or classification program that could be used for builders undertaking construction in existing neighbourhoods
  - g. considering any methods successfully employed by other municipalities.

### Report

Edmonton is growing and over the next ten years the city's population is forecasted to increase by an additional 170,000 people. The City's strategy is to balance growth up, in and out to enable an attractive and affordable range of housing types in well-designed and well-connected communities. Mature and established neighbourhoods have a key role to play in the ongoing growth and change in the city.

Over the last five years (2010-2014) 8,475 new infill housing units have been added to Edmonton's mature and established communities. In 2014 alone, the City approved over 12,000 new housing units city-wide, and over 2,000 of these were new infill homes (a combination of low, medium and higher density forms).

Infill provides an opportunity for renewal and regeneration of mature and established neighbourhoods and enabling new homes in older communities is an important way to sustain our mature and established neighbourhoods. Each of these neighbourhoods has changed over time and will continue to evolve into the future.

Edmonton's Infill Roadmap, a two-year work program that supports more and better infill, outlines the key steps ahead through a series of 23 actions, responds to new challenges and opportunities as they arise, promotes ongoing conversation about city change and helps remove barriers to encourage new and more diverse housing in the city. Advancing opportunities for infill development in Edmonton is an intentional, deliberate process, which recognizes that the needs, priorities and aspirations of Edmontonian's are changing.

Administration has recognized that additional issues have arisen as the Roadmap is implemented and infill development increases. Administration, along with its partners in the community and development industry, is working to be proactive, adaptable and responsive to these issues. The following report addresses key activities that are needed to support neighbourhood change and minimize the temporary disruption that can occur in mature and established neighbourhoods as new homes are constructed.

### Current Rules and Regulations

The development of land in Edmonton is managed by various municipal bylaws and provincial Acts which outline regulations and standards to which all properties must adhere. These include:

- *Safety Codes Act*, including the Alberta Building Code and Alberta Fire Code;
- *Municipal Government Act*;
- Business Licence Bylaw 13138;

- Community Standards Bylaw 14600;
- Drainage Bylaw 16200; and
- Zoning Bylaw 12800.

The above bylaws and Acts are intended to ensure that properties are safe, well maintained, and appropriate for the neighbourhood. Attachment 1 provides a summary of bylaws and legislation applicable to development issues.

### Current Practices

There is currently a framework in place to deal with complaints related to conflicts arising from infill construction. Complaints received from citizens are forwarded to the appropriate department depending on the nature of the reported complaint. These complaints are initially investigated to determine if an infraction has occurred prior to enforcement action being taken. Construction related complaints in mature and established neighbourhoods are similar to those received in greenfield developments; however, complaints received within suburban neighbourhoods are less common.

When a complaint is received, contact is made with the applicant to encourage best construction practices when possible and voluntary compliance, prior to the City taking enforcement action. Enforcement activities include issuing a warning notice, a violation ticket or an order to remediate under the *Municipal Government Act* or *Safety Codes Act*.

Recognizing that infill development generates more complaints than greenfield development, Administration has recently implemented a new practice to proactively provide general information about good construction practices. When a development permit is issued for new construction in a mature or established neighbourhood, an information postcard is now provided to the applicant. The postcard encourages applicants to review the Good Neighbour Guide, developed as part of Edmonton's Infill Roadmap (Action 5), which is an informative tool about what infill builders can do to promote safe, tidy, and considerate infill construction sites by providing a link to the evolving infill website.

Attachment 2 provides a summary of common construction complaints and outlines relevant legislation and bylaws.

### Implementing Changes to Current Practices

As more residents call mature and established neighbourhoods home, Administration recognizes the ongoing opportunity to make infill easier and better for everyone involved – residents, builders, neighbourhoods and the City. A number of initiatives currently underway to address construction issues in existing neighbourhoods include:

1. Require Development Permit Signage

Administration is developing visible and easy to understand signs about approved development permits to be posted on a building site outlining what will be built and who to contact for more information as recommended by Action 4 of Edmonton's Infill Roadmap. The requirements for these signs are currently being developed and are scheduled to be in place for the second quarter of 2016. A proposed text amendment to Zoning Bylaw 12800 is scheduled for Executive Committee on October 27, 2015.

### 2. Increase Penalties for Offences

As part of research into enforcement actions in other municipalities, it was found that the City's current fines of \$400 for infractions to Zoning Bylaw 12800 and development permit conditions are comparatively lower than those found in other municipalities in Alberta. The fines are often not a substantial deterrent to promote compliance.

Comparatively, the City of Calgary has a comprehensive minimum penalty schedule with minimum penalties ranging from \$1,500/day to \$3,000/day depending on the offence. A review of penalties for offences is currently underway and amendments to Zoning Bylaw 12800 will be proposed to Executive Committee in November 2015.

### 3. Create a Development Completion Permit

Currently, Administration is advised of development not being built in accordance with an approved development permit when a complaint is made on that property. To ensure compliance, Administration is implementing a development completion permit as a requirement for new construction projects.

A new development completion permit will apply to all major industrial, commercial and multi-residential projects, as well as low density infill development. As part of this process, Administration will examine introducing the requirement for pictures to be submitted as part of the development permit applications to demonstrate existing conditions of City infrastructure. Work to develop this process is currently underway for implementation in the second quarter of 2016.

### 4. Implement an Acknowledgement Form for Applicants

Administration is creating an acknowledgement form that development permit applicants will sign to ensure applicants developing in mature and established neighbourhoods are aware of the City's regulations for development and informed of best construction practices. This document may assist in addressing typical construction issues such as: hours of operation, nuisance noise, posting of contact information, interim drainage from construction, storage of materials and garbage, contractor parking, dust and damage to public property, and so on.

The acknowledgement form will outline the applicable bylaws and legislation. Grouping the relevant construction legislation into one comprehensive document will communicate expectations to applicants in a clear and concise manner. As part of this, Administration will also identify for the applicant when other City permits are required for development related activities, such as on-street construction and maintenance permits for construction over City land or boulevards.

Potential amendment to Zoning Bylaw 12800 may be required to facilitate the requirement for additional information to be provided as part of a development permit application. Administration will conduct the review in fall/winter 2015.

### 5. Requests for Business Licence Reviews

Every business operating in the City must have a business licence. As part of the process for receiving development permit applications, Administration ensures that builders have valid business licenses to operate in the City of Edmonton.

Administration can cancel, suspend or place conditions on a business licence by conducting a business licence review in accordance with the Business Licence Bylaw 13138. This review process involves reviewing evidence to determine if the builder's conduct warrants cancelling, suspending or placing conditions on the licence. If there is sufficient evidence to support a review, notice will be provided to the business and they will be given an opportunity to respond before a decision is made. Any decision to cancel, suspend, or place conditions on a licence is appealable to the Community Standards and Licence Appeal Committee. Businesses without a valid Edmonton business licence are not legally permitted to operate in the City.

Should a business consistently not conform to approved development permits or continually disregard other bylaw requirements Administration will, beginning in 2016, request business licence reviews for that business. Businesses without a valid business licence are not legally permitted to operate in the City.

### 6. Expand Development Permit Pre-Application Meetings

In 2014, Administration introduced optional pre-application meetings for major development permits to review a proposed development before making a formal application. The intent of these meetings is to have Administration from various departments available to identify potential issues with the proposed development including identifying Zoning Bylaw 12800 variances and additional submission requirements such as parking impact assessments. The pre-application meeting process has resulted in increased quality of applications submitted to the City and reduced technical review timelines compared to projects which did not have a pre-application meeting.

Expanding pre-application meetings to residential development permit applications in mature and established neighbourhoods will also provide Development Officers with the opportunity to let applicants know of the importance for good construction practices.

### 7. Implement a Mature Area Development Team

Communities have requested a point of contact within Administration to support ongoing conversations about infill and neighbourhood changes, understanding Edmonton's planning and development process and providing residents and community leagues with ease of access for information on development in their communities. Citizens have voiced frustration that information on planning and development can be accessed through a variety of channels and that it is confusing determining the point of contact.

Administration is in the process of establishing a Mature Area Development team through the temporary reassignment of vacant positions. A service package will be advanced through the 2016-2018 budget process to formalize further resource requirements. The team will act as conduits into all City processes regarding rezoning, subdivision, development permit applications, building permit applications, development compliance issues, and will provide general information to the public on the City's regulations and practices as they relate to development in mature neighbourhoods.

### 8. Continue with Communication and Engagement Activities

Making infill easier to talk about was an important part of the "Evolving Infill" process used to develop Edmonton's Infill Roadmap and continues to be a critical piece of the Roadmap's implementation. There are several key initiatives that are designed to improve communication and engagement activities with development permit applicants and communities about infill construction issues.

As part of Action 5 of Edmonton's Infill Roadmap, a Good Neighbour Guide was prepared and published in the spring of 2015. The Good Neighbour Guide is intended to evolve to respond to current construction issues. Currently, two initiatives are planned to enhance the usability of the Guide. A stakeholder engagement process will be undertaken in the fall of 2015 to solicit feedback and suggestions that will improve the Guide's content. This feedback will be incorporated into an updated version in late 2015. Periodic updates can be expected over time to ensure the Guide remains relevant.

An optional good neighbour construction practice checklist will be added to the guide. This is intended to be a tear-out which may be used and signed by neighbours and builders before construction begins to improve communication and transparency on construction projects. The checklist will not be a legally binding or mandatory agreement but could lead to mutual understanding for respectful construction practice and will aid in relationship-building between parties at the front-end of a new project. This initiative is underway.

Ongoing communications and engagement is an important part of managing change. Work is currently advancing for infill-specific activities and events (Edmonton's Infill Roadmap, Action 8) through the preparation of an Infill Design Competition in the spring

of 2016, and an additional local Infill Tour that will build on the success of the first tour conducted in the winter of 2015. Both of these activities are intended to showcase infill best practices. New public tools and resources are currently being prepared to improve understanding of construction practices (Edmonton's Infill Roadmap, Action 7) including:

- enhanced and updated development/zoning notification letters with target implementation in the fourth quarter of 2015
- an education session for builders and contractors on good neighbour construction practice will be developed and offered in partnership with the Canadian Home Builders Association and the Infill Development in Edmonton Association in the first quarter of 2016
- the Evolving Infill website will be expanded to include more content on good construction practices, including fact sheets and videos about key issues, and contact information for key resources

### Future Opportunities for Change under Consideration

As part of the examination of opportunities to improve construction practices in mature or established neighbourhoods, Administration considered all of the following options, as outlined in the motion, some of which have limitations in their application in Edmonton.

#### 1. Neighbour/Builder Agreement or Neighbour/Neighbour Agreement

Requiring an agreement between neighbours or between a neighbour and builder is limited because the City has no ability to enforce these agreements. In circumstances where parties cannot agree, the City would then have to assume the responsibility of facilitating the negotiation of the agreement. Such a process would be impractical in its implementation. As an alternative approach, an optional good neighbour construction practice checklist will be added to the Good Neighbour Guide.

#### 2. Letters of Credit and Performance Bonds

Administration has explored implementing a security in the form of a letter of credit or performance bond. The purpose of this security is to guarantee the completion of a builder's work, and repairing damage to public infrastructure or a neighbouring property associated with the completion of work.

A letter of credit is issued by a bank guaranteeing an amount of money available to the City to draw upon should the builder default on conditions of their agreement. Currently, the City requires letters of credit from builders to ensure the landscaping required as a condition of a development permit is completed. As the conditions of a development permit create a contractual relationship directly between the developer and the City, the City is able to collect funds to ensure completion of landscaping. Letters of credit can be drawn upon on demand, meaning no explanation is needed prior to the bank releasing the funds.

A performance bond is held by a third party bond company, or insurance company, that provides a guarantee that the work will be completed by the builder. Bonds are traditionally more difficult to collect as it would require the City to demonstrate that the builder did not meet their obligations or the conditions of their permits. Cashing performance bonds often involves a legal process and takes more time to complete and has associated costs for the complainant and for the municipality.

Securities for construction damage between neighbours can be a condition of a contract or agreement between those two landowners. As the City is not a party in a contract between property owners, the City is not able to leverage the security to rectify a situation where damage occurs to a neighbouring property.

Letters of credit and performance bonds would require regulations to be introduced that govern relationships between independent property owners in order for the City to utilize security between neighbours. While regulations would provide an opportunity for the City to require securities for this purpose, it would still require legal action by one neighbour against another to obtain funds to repair damages. If the City requires and collects funds, it will also be required to act as a mediator for these disputes and investigate each complaint to determine: if damage is present, the origin of those damages, assign fault for those damages, and to determine the appropriate level of financing required to complete repairs or assess punitive damages. Due to the associated liability of a municipality becoming involved in private property disputes, Administration does not recommend that the City of Edmonton require securities for private property damage in established neighbourhoods.

### 3. Builder Certification Programs

Research of other municipalities did not find any examples of classification or incentive programs for builders based on past performance that are managed by municipalities. The certification of specific builders may be considered an endorsement by the City. Should a builder cause damage to an adjacent property, a claim may be made against the City for endorsing that builder. As such, Administration does not recommend a certification program.

An alternative to a certification program, is to provide builders who have consistently demonstrated good business practices with an expedited approval service. This alternative will be explored further.

### Collaborating with Industry Partners

Administration met with the Canadian Home Builder's Association, Edmonton Region, representatives on August 12, 2015, to discuss opportunities to support their membership in increasing the standard of construction practices in existing neighborhoods. In summary, the Association supports the following:

- suspension or cancellation of a business licence, or adding conditions to a business licence, if the business is continually not conforming to approved development and building permits and City Bylaws
- expansion of the Development Permit Pre-Application Meetings to include low density infill development
- ensuring on-street construction and maintenance permits are received in a timely manner after a development permit has been approved
- submission of pictures of City infrastructure (surrounding the development) and submitting it with the development permit application
- submitting lot grading plans at the development permit application stage.
- creation of the Development Completion Permit
- requiring builders to install a sign (with information about the development and who to contact for more information)
- implementing the acknowledgment form for applicants (City and Applicant)
- updating the Good Neighbour Guide with more relevant information

The Canadian Home Builders Association recognizes that adjacent neighbours feel the impact of new development and the disruption of equipment and workers immediately adjacent to their home. The Association expressed that they will encourage their members to continue to foster positive neighbour relations, promote safe and tidy infill building sites and have considerate construction practices.

At the time of writing this report, Administration is working to organize a meeting with the Infill Development Edmonton Association. Administration will continue to work with industry partners to assist in providing information to their organizations for resolving issues related to construction in Edmonton. While builders and contractors are not required to be a member of any of these organizations, their participation is valuable and ensures the collaborative effort needed to support infill in mature and established neighbourhoods.

### Best Practices in Other Municipalities

Many municipalities across Canada are recognizing the benefits of supporting redevelopment within mature and established neighbourhoods and providing opportunities to support this evolution and reinvestment. Research into other municipalities has found that many cities face similar issues regarding construction in existing neighbourhoods to those found in Edmonton. Attachment 3 outlines bylaws and guidelines that deal with construction practices in other municipalities.

The majority of municipalities mitigate concerns through noise or property standards bylaws. Municipalities do not regulate trespass, theft or property damage resulting from construction as they are addressed through provincial legislation.

Edmonton is proactively developing a strong and coordinated response to ensure that negative issues associated with infill construction are minimized and mitigated. In doing so, Administration is committed to learning from other jurisdictions, to sharing our

learnings with others, and to exploring new ideas locally to continually improve processes and the experiences of all stakeholders involved. As Edmonton continues to grow and change, as our mature and established communities evolve over time, our municipality is poised to lead innovatively, creatively, thoughtfully and collaboratively.

### Conclusion

Edmonton's Infill Roadmap outlines priorities for change, and also makes the commitment to seize opportunities related to infill development to continuously improve and evolve. Administration recognizes that additional issues associated with construction practices arise as infill is built across our mature and established neighbourhoods and is actively working to be adaptable and responsive to these issues and ensure construction is completed in a respectful and appropriate manner. As infill development matures in Edmonton and as new issues emerge over time, Administration will continue to advance new ways of thinking, problem solving and engaging with community and a diversity of partners. This commitment to ongoing improvement reflects the complex nature of infill in our city and presents opportunities for positive changes that Edmontonians expect.

### **Policy**

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

- Section 4.1, Developing and Planned Neighbourhoods
- Section 4.2, Established Neighbourhoods

### **Attachments**

1. Summary of Bylaws and Legislation Applicable to Development Issues
2. Construction Issues - Relevant Legislation
3. Construction Practices, Bylaws and Guidelines

### **Others Reviewing this Report**

- K. Rozmahel, General Manager, Corporate Services