



COUNCIL REPORT

To: Paul Gipps, CAO

Date: February 28, 2023

From: Yvonne Mitchell, Planner II

File No: P 22-03

Subject: **Development Application Process Review Streamlining – Bill 26 Phase 2 (First, Second and Third Reading)**

RECOMMENDATION

THAT Council consider and resolve to give first, second, and third reading to City of West Kelowna Development Applications Procedures Amendment Bylaw No. 0260.02, 2023; and,

THAT Council consider and resolve to give first, second and third reading to City of West Kelowna Public Notice Bylaw No. 0303, 2023.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity – We will work with our partners on the Westside and throughout the region to advocate for and support efforts aimed at helping West Kelowna businesses prosper. With a focus on the future, we will advance opportunities to expand our economy, increase employment, and develop the community in ways that contribute towards prosperity for all.

Strengthen our Community – We will provide opportunities for the residents of West Kelowna to build connections, celebrate successes, embrace the community's strengths and diversity, address shared needs, and contribute to shaping the community's future.

BACKGROUND

On November 25, 2021, Bill 26, being the *Municipal Statutes Amendment Act (No. 2) 2021*, was given Royal Assent. Bill 26 included amendments to various legislation, including sections of the *Local Government Act* and *Community Charter* resulting in the following:

1. Allowing for delegation of decisions on “minor” Development Variance Permits;

2. Removal of the default requirement to hold public hearings for zoning bylaw amendments that are consistent with the Official Community Plan; and
3. Enabling local governments to determine specific notice methods for public notice requirements.

The changes brought forward by Bill 26 are a result of the Ministry of Municipal Affairs Development Approval Process Review (DAPR). DAPR was initiated in December 2018 to better understand the challenges facing development approvals across British Columbia. In response to the feedback received during DAPR, Bill 26 provides local governments with powers to increase efficiency in the development process, remove barriers, and speed up housing approvals.

Council has considered changes to number 1 above, and on September 20, 2022, adopted amendments to the Development Applications Procedures Bylaw No. 0260 to delegate minor development variance permits. In addition, Council took steps to further streamline the development approvals process, and delegated certain development permit applications, and strata conversions for duplexes.

This report focuses on public hearing requirements and public notice requirements (2 and 3 above).

Administrative Note

Due to a process error in Escribe that has since been corrected, an incorrect version of amendments to the Development Application Procedures Bylaw No. 0260 was adopted in September 2022. The amendments delegated minor development variance permits, certain development permits, and duplex strata conversions as requested by Council. However, they did not include amendments to the Bylaw to require public notification for delegated minor development variance permits as directed by Council. Therefore, proposed amendments to the Bylaw in this report include resolving this error. It should be noted that despite the error any delegated minor development variance permits have been done with public notification as directed.

REMOVAL OF DEFAULT REQUIREMENT TO HOLD PUBLIC HEARINGS

Under s.464 of the *Local Government Act* “a local government is not required to hold a public hearing on a proposed Zoning Bylaw if:

- An Official Community Plan is in effect for the area that is subject to the Zoning Bylaw; and
- The Zoning Bylaw is consistent with the Official Community Plan.”

Local governments were previously able to not hold public hearings for zoning bylaws consistent with the Official Community Plan by means of waiving the public hearing. As a result of Bill 26 the requirement to hold a public hearing for these types of applications has been removed completely. This change is an effort by the province to support local governments in streamlining their development approvals processes to increase housing supply. The change comes after the public hearing process was identified in DAPR

consultations as an area that could have an impact on streamlining. Stakeholders identified the following challenges with the public hearing process during DAPR:

- The format of a public hearing does not allow for discussion;
- Public hearings occur late in the development approvals process making changes difficult to accommodate;
- Public hearings tend to attract and empower well-organized interest groups that may not represent the broad perspective of the community or even those who would be the most directly impacted by a decision; and
- Unnecessary hearings can add costs and time delays to projects.

Although public hearings are no longer required for zoning bylaws consistent with the Official Community Plan, the public hearing requirement remains for zoning bylaws *not* consistent with the Official Community Plan, Official Community Plans, early termination of land use contracts, and phased development agreements.

Notice if public hearing not held

Under s. 467 of the *Local Government Act*, if a local government decides not to hold a public hearing for a zoning bylaw consistent with the Official Community Plan, it must give notice. Notice requirements are similar to when a public hearing is held (time and place where bylaw can be inspected, purpose of the bylaw, etc.) but instead advise of first reading of the bylaw.

Decision to hold public hearing

Although there is no longer a requirement to hold public hearings for zoning bylaws consistent with the OCP in the *Local Government Act*, Councils may still decide to hold public hearings for these types of applications. As presented, the bylaw still provides Council the opportunity to choose to hold a Public Hearing after public notice at first reading.

DISCUSSION

Since Bill 26 became law in late 2021, local governments have not been required to hold public hearings for zoning bylaws consistent with an Official Community Plan pursuant to the *Local Government Act*. The City of West Kelowna holds public hearings for all zoning bylaw amendments including those consistent with the OCP. In 2022 a total of 12 public hearings were held. The majority of public hearings held, 7 out of 12 (58%), were for zoning bylaws consistent with the OCP and were not required to be held under the *Local Government Act* (Figure 1). At 5 out of 7 (71%) of the public hearings for zoning bylaws consistent with the OCP no public input was provided at the meeting (Figure 2).

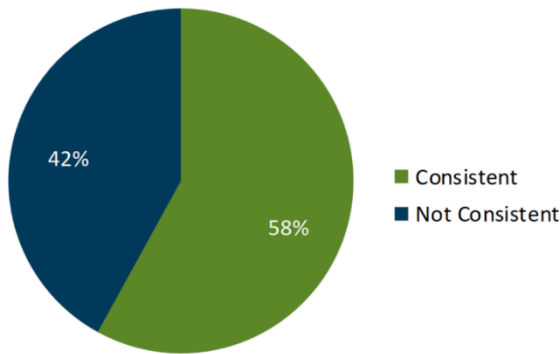


Figure 1: 7 out of 12 public hearings were for zoning bylaws consistent with the OCP. These public hearings were not required under the *Local Government Act*.

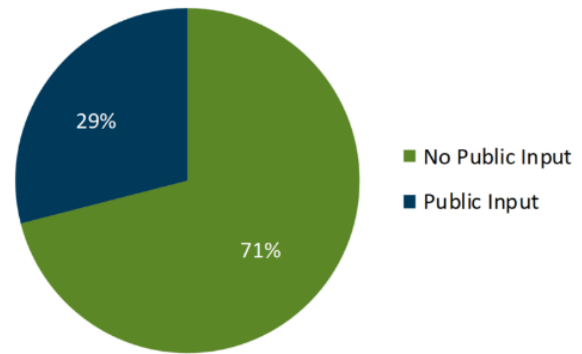


Figure 2: At 5 out of 7 non-statutory public hearings no public input was provided at the meeting.

Although most public hearings for zoning bylaws consistent with the OCP in the last year received no public input at the meetings themselves, most of these applications received written submissions. For 5 of 7 (71%) of the applications written submissions were received (Figure 3).

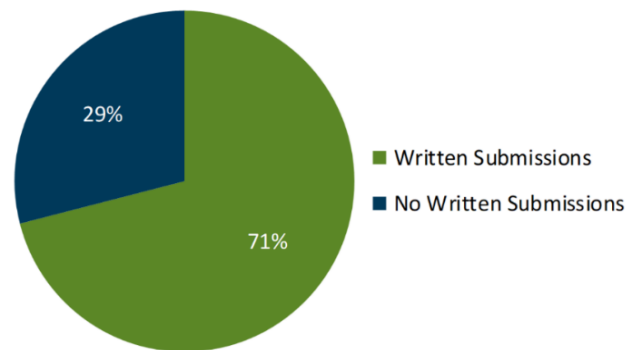


Figure 3: 5 out of 7 zoning bylaws consistent with the OCP received written submissions.

Proposed Amendments to Public Hearing Requirements

*Staff recommend Council decide not to hold public hearings for zoning bylaw amendment applications consistent with the Official Community Plan as these hearings are no longer required under the *Local Government Act*. Staff also recommend Council make the necessary changes to the Development Applications Procedures Bylaw to implement this decision. Key amendments to the Development Application and Procedures Bylaw are excerpted below (See Attachment 3 for full amendments):

- 3.14.1. A public hearing will not be held for a Zoning Bylaw Amendment application which is consistent with the Official Community Plan pursuant to the *Local Government Act*.
- 3.14.2. Notwithstanding the above, Council may at their discretion choose to hold a public hearing for a Zoning Bylaw Amendment application which is consistent with the Official Community Plan.

* Notwithstanding those specific properties within the proposed OCP that are identified to have public meeting for any rezoning amendment.

Proposed Process

If Council decides to not hold public hearings for these types of applications, notice would be given before first reading that advises of the date, time, purpose, etc. of first reading of the bylaw. The statistics above demonstrate written submissions have been an effective way of engaging with the public (Figure 3). As such, staff recommend notices of first reading include the opportunity and instructions for the public to provide written submissions as is done with notice of public hearing. Staff would then provide any written submissions received to Council at first reading. Staff understand based on the written submissions received there may be circumstances where Council wishes to hold a public hearing despite the zoning bylaw amendment being consistent with the OCP. As such, the ability to do so is recognized in the amendments above and Figure 4 below.

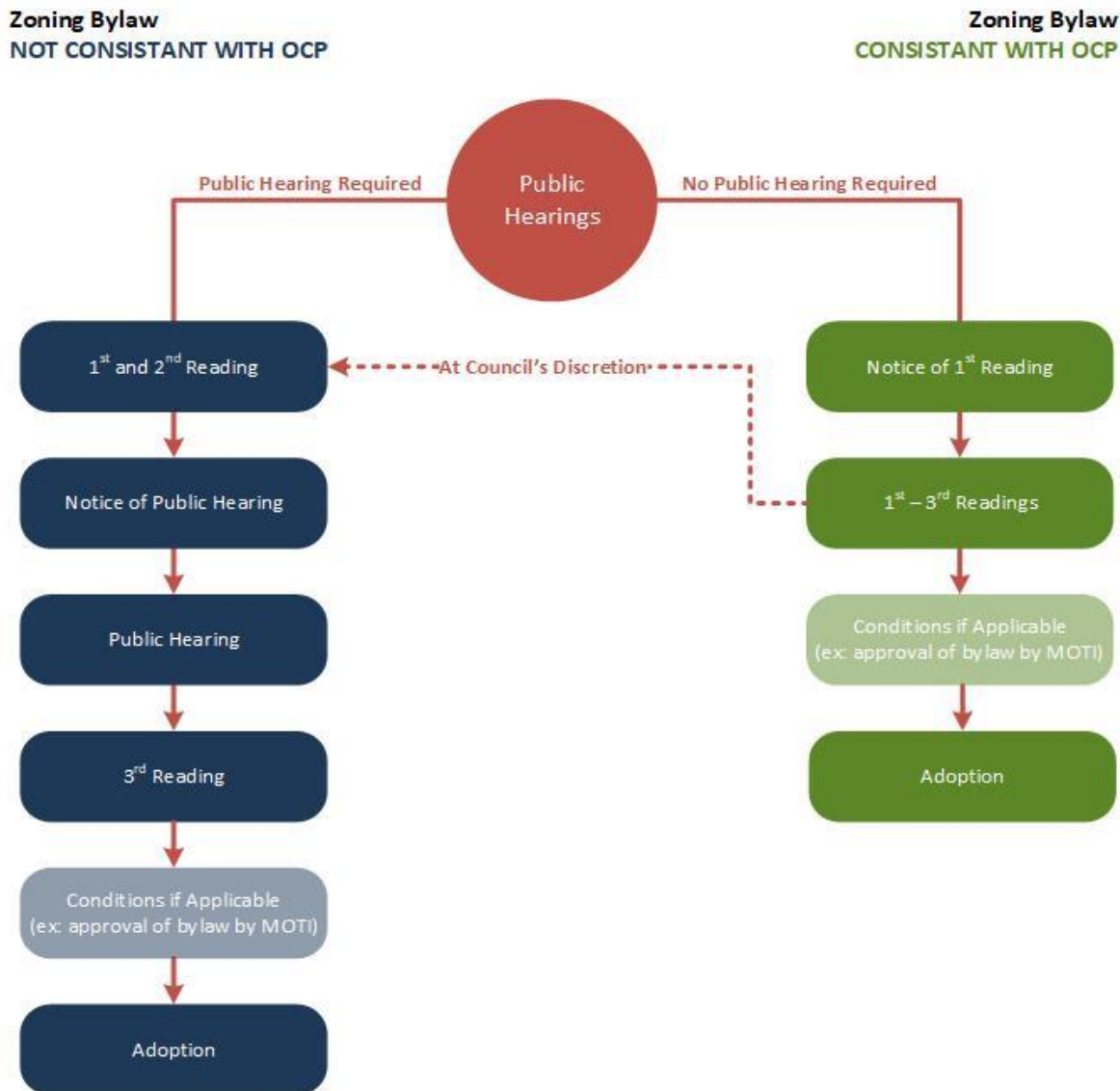


Figure 4 – Proposed public hearing process for zoning bylaws consistent with the Official Community Plan.

This proposed process for zoning bylaw amendments consistent with the OCP provides an effective means of engaging and receiving input from the public given public hearing turnout (Figure 2) and ensures Council has the opportunity to hold a hearing where deemed appropriate. The process also directly addresses challenges with the public hearing process identified in DAPR:

- Provides a public input opportunity earlier in the development approvals process (before first reading); and
- Removes public hearings that would have otherwise been held unnecessarily (See Figure 2).

Alternate Recommendations / Options

If Council wishes to decide whether to hold public hearings for each individual zoning amendment application that is consistent with the OCP, staff can instead bring each zoning bylaw amendment application forward for consideration separately. This would be done by presenting applications to Council for initial consideration at a separate Council meeting before first reading. At this meeting Council can decide to hold/not hold a public hearing for the application. It should be noted that this approach would not streamline the development approvals process as significantly as Council deciding now and would result in an extra step in the process. This option has been presented as Alternate Motion #1 to postpone consideration of the bylaws.

ALTERNATE MEANS OF PUBLIC NOTICE

Under s.94(1)(a) of the *Community Charter* a local government may by bylaw provide for alternative means of publication for public notice. Previously, posting in a newspaper for 2 consecutive weeks was the only option available.

This change is an effort by the provincial government to modernize local government public notice requirements. The change comes after the Union of British Columbia Municipalities repeatedly requested the province change the requirement that all public notices be published in a newspaper, as printed newspapers are no longer the only or most effective means of giving public notice.

A local government wishing to adopt a bylaw providing for alternative means of publication of public notice must:

- Specify at least 2 means of publication by which a notice is to be published, not including posting in the public notice posting places;
- Consider if the means of publication are:
 - reliable
 - suitable for providing notices; and
 - accessible

before adopting the bylaw as per the *Public Notice Regulation, B.C. Reg. 52/2022* (Attachment 1); and

- If adopted, publish all notices that are required to be posted in accordance with s.94 of the *Community Charter* by these means including the following:

Local Government Act

- s.13 Reduction of municipal area
- s.16 Other redefinition of boundaries
- s.50 Public notice requirements (*applies to elections and assent voting*)
- s.466 Notice of public hearing
- s.494 Public notice and hearing requirements
- s.612 Heritage designation procedure
- s.647 Notice of annual tax sale

Community Charter

- s.24 Publication of intention to provide certain kinds of assistance
- s.26 Notice of proposed property disposition
- s.30 Reservation and dedication of municipal property
- s.40 Permanent closure and removal of highway dedication
- s.86 Alternative approval process
- s.99 Annual meeting on report
- s.124 Procedure bylaws
- s.127 Notice of council meetings
- s.204 Parcel tax roll review panel
- s.208 Updating the parcel tax roll
- s.213 Local area service on council initiative — subject to petition against
- s.227 Notice of permissive tax exemptions
- s.252 Recovery of taxes by the legal remedy of distress

For more information see the Ministry of Municipal Affairs “Public Notice Guidance Materials for B.C. Local Governments” (Attachment 2).

DISCUSSION

The City of West Kelowna currently follows the default notice method of posting once in a newspaper for 2 consecutive weeks. The City uses the West K News, a local newspaper that releases editions once a week on Wednesdays. The West K News is available online or in print via a paid subscription.

The Ministry’s Public Notice Guidance Materials for B.C. Local Governments (Attachment 2) provides guidance on possible alternative means of publication (Figure 5).

Possible methods to publish public notice:

- Online or print newspaper.
- Local government website.
- Local government subscription service.
- Community website or newsletter.
- Local government Facebook page.
- Direct email or mail out.
- Posting at recreation centres.

Examples of sources that would likely not meet the principles of public notice*:

- **Twitter:** the character limit means it is not **suitable** for displaying all the required information for a statutory public notice.
- **Non-government Facebook or webpage:** a source containing mostly opinions and not facts would not meet the principle of **reliability**.
- **Radio/TV:** because the information is only quickly displayed/read – it limits **access** to the information.

**All of the sources listed above would be appropriate as a supplemental way of informing the public; however, they would likely not meet the threshold established by the principles of effective public notice (e.g., reliable, suitable and accessible) and therefore couldn't be used as one of the official means of public notice under section 94.2 of the Community Charter.*

Figure 5 – Excerpts from the Ministry’s Public Notice Guidance Materials for B.C. Local Governments.

Staff have also reviewed approaches taken by other local governments across British Columbia that have adopted alternative means of publication. Some local governments have adopted a hybrid approach to public notice (print newspaper and an electronic means) while others have moved completely to electronic public notice:

Local Government	Alternate means of publication
City of Penticton	1. online newspaper 2. print newspaper
Regional District of Okanagan Similkameen	1. local government website 2. local government subscription service
City of Nelson	1. print newspaper 2. local government website
City of Prince George	1. local government website 2. local government Facebook page
City of Fort St. John	1. local government website 2. local government social media
City of Dawson Creek	1. print newspaper 2. local government website 3. local government social media

District of Hudson's Hope	<ol style="list-style-type: none"> 1. local government website 2. local government social media 3. local government subscription service
City of Nanaimo	<ol style="list-style-type: none"> 1. newspaper 2. local government website
Town of Ladysmith	<ol style="list-style-type: none"> 1. newspaper 2. local government website

Staff examined the City of West Kelowna's electronic public notice options which include the City's website, social media, and email subscription service (E-News). The City's website is a frequently visited resource with 74,900 unique page views¹ in 2022.

Electronic Public Notice Option	2022 Statistics
City's Website	- 74,900 unique page views in 2022
Email Subscription Service (E-News)	- 4,848 total subscribers - 3,303 subscribers to "News and Alerts" list
City's Facebook Page	- 4,507 subscribers

Proposed Amendments to Public Notice Requirements

Staff recommend Council use a hybrid approach to public notice and adopt the below alternative means of publication in a Public Notice Bylaw (Attachment 5):

1. Print newspaper
2. City of West Kelowna website

Consequential amendments to the Development Application Procedures Bylaw to remove references to publishing only in a print newspaper would be required (Attachment 3).

If adopted, newspaper and the City's website would become the statutory required notice under s.94 of the *Community Charter*. This does not prohibit the City from using supplementary means of notification, such as the City's subscription service, social media, CityView, etc. where applicable.

It should be noted that the province advises local governments to regularly review the public notice bylaw (e.g. annually) to ensure that the principles of public notice continue to be met for each of the methods identified in the bylaw. Although newspaper is a viable means of publication at this time, it may not be possible to rely on this means in the future and moving completely to electronic public notice may be required.

¹ Unique page views can be understood as user sessions per page, with each session potentially representing multiple views of the page but a minimum of one view per session (if a user views the same page more than once in a session, this will only count as a single unique page view).

FINANCIAL IMPLICATIONS

Not holding public hearings where not required will allow for more efficient use of staff resources, improve processing times, increase housing supply and expand the City's tax base.

Adopting the proposed Public Notice Bylaw would mean only one newspaper notice is required. This would reduce the City's notice publication costs. The Public Notice Bylaw would also require one notice on the City's website. This means of publication would not have any additional costs.

NEXT STEPS

If the proposed amendments to the Development Application Procedures Bylaw and new Public Notice Bylaw are adopted, bulletins and other materials will be updated to reflect the changes.

Alternate Resolution:

1. **THAT** Council consider and resolve to postpone first, second and third reading of Development Applications Procedures Amendment Bylaw No. 0260.02, 2023 and City of West Kelowna Public Notice Bylaw No. 0303, 2023.

Should Council postpone consideration of the proposed amendment bylaw, further direction to staff on how to proceed is requested. This includes the option for Council to make a decision on holding a public hearing on each individual zoning application.

2. **THAT** Council consider and resolve to deny Development Applications Procedures Amendment Bylaw No. 0260.02, 2023 and City of West Kelowna Public Notice Bylaw No. 0303, 2023.

REVIEWED BY

Brent Magnan, Director of Development Approvals

Corinne Boback, Legislative Services Manager / Corporate Officer

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes No

Attachments:

1. Public Notice Regulation, B.C. Reg. 52 2022
2. Public Notice Guidance Materials for B.C. Local Governments
3. Development Applications Procedures Amendment Bylaw No. 0260.02, 2023
4. Redline Development Application Procedures Bylaw No. 0260, 2018
5. Public Notice Bylaw No. 0303, 2023