

# Report to Council



**Date:** May 11, 2020  
**To:** Council  
**From:** City Manager  
**Subject:** Development Approval Process Options  
**Department:** Office of the City Clerk

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## **Recommendation:**

THAT Council receive, for information, the report from the Office of the City Clerk dated May 11, 2020, with respect to options for development approval processes;

AND THAT Council direct staff to prepare the necessary policies and bylaws to implement changes to approval process for development variance permits as described in the report from the Office of the City Clerk dated May 11, 2020;

AND THAT Council direct staff to investigate further and report back to Council changes to the public hearing process as described in the report from the Office of the City Clerk dated May 11, 2020;

AND FURTHER THAT Council direct staff to hold the June 2, 2020 Public Hearings and Tuesday regular meetings in accordance with the procedures described in the report from the Office of the City Clerk dated May 11, 2020.

## **Purpose:**

To consider options for development approval processes for development variance permits and public hearing items.

## **Background:**

The City's Development Application Procedures Bylaw No. 10540 and Council Procedure Bylaw No. 9200 establish processes for development applications and their associated approvals. In an effort to continue to improve processes, staff have been considering different options for development approvals to achieve several objectives: ensure Council and the public have relevant information early on in the decision-making and input process, focus public hearings on public input, and streamline approvals by reducing unnecessary and low-value processes. Recommended changes focus on development variance permit (DVP) applications and public hearings.

Currently, DVPs are considered by Council at Tuesday PM regular meetings with opportunity for the applicant to present and the public to address Council. Notices are mailed to the subject property and properties within 50 m, and a sign is posted on the property. The procedure is much the same for public hearings, with notices advertised in the newspaper and mailed to the subject property and properties within 50 m, and a sign posted on the property.

## **Discussion:**

### *Development Variance Permits*

Public notification is required prior to Council's consideration of a DVP and, unlike development permits, issuance of a DVP cannot be delegated to staff. However, a public hearing process is not mandated. Many DVP applications represent a minimal departure from the bylaw requirement and often do not generate written correspondence or in-person representation at a Tuesday Council meeting.

To streamline the approval process while continuing to provide opportunity for public input, staff recommend creating two categories for DVP applications (major and minor) with different approval processes for each. Major DVPs would continue to be considered at Tuesday PM Council meetings, with opportunity for applicant and public presentations, while minor DVPs would be considered at Monday PM Council meetings without an opportunity for the applicant or the public to present directly to Council. The applicant and the public could still submit written correspondence in advance of Council's consideration. In effect, this would be similar to the process for a waived public hearing except that Council only considers a DVP application once following the public notification period.

Major and minor DVP applications would need to be defined to determine how Council considers each application. Proposed criteria for minor DVP applications are:

1. Consistent with the intent of the Official Community Plan;
2. Staff recommendation of support;
3. A maximum of three variances;
4. Variances for different development regulations (e.g., setbacks, lot depth, site coverage) within a certain percentage of the bylaw requirement.

Staff would identify detailed parameters for variances to be considered minor under item 4 above based on practices in other jurisdictions and Kelowna's context. For example, setbacks may be appropriate up to a 10% variance of the bylaw requirement while lot width may be appropriate up to 5%. Applications that do not meet the above criteria would be considered major and would follow the current approval process.

In addition, it is recommended the Divisional Director of Planning & Development Services have discretion to direct what would otherwise be considered a minor variance to a Tuesday PM Council meeting for the public to have the opportunity to present directly to Council, where appropriate. The same definitions and processes would also be applied to heritage alteration permits with variances.

### *Public Hearings*

The availability of more information early in the approval process for public hearing items would support more informed decision-making and public input. Staff recommend applicants be given the

opportunity to present to Council following the staff presentation at initial consideration instead of during the public hearing. This gives Council the chance to ask questions of applicants before advancing the application to a public hearing. It also gives the public more information about the application before the notification period and public hearing.

With both staff and applicant presentations available to watch online (live or recorded), neither staff nor the applicant would present at the public hearing, allowing that process to focus more on the public's input. The applicant would still have an opportunity at the end of the public hearing to respond specifically to questions raised by the public.

### *Next Steps*

Should Council support this direction, amendments to Development Application Procedures Bylaw No. 10540 and Council Procedure Bylaw No. 9200 would be required to implement these changes. Staff would also draft a new Council policy to define major and minor variances for the purposes of the new procedures, expanding on the criteria outlined above. These items would be brought forward for Council consideration at an upcoming Council meeting, following stakeholder engagement.

### *Public Hearings & Tuesday Regular Meetings During the COVID-19 Pandemic*

On March 23, 2020, Council directed staff to recommend waiving public hearings for rezoning applications that meet certain criteria, and on April 20, 2020, Council directed staff to hold the May 12, 2020 Public Hearing and Regular Meeting with applications scheduled at individual times. These, along with other measures, allow public hearings to be held in a way that meets the public health guidelines and orders of the Provincial Health Officer. Given the ongoing need for physical distancing and limits on public gatherings, staff recommend that Council direct staff to hold the June 2, 2020 public hearings and Tuesday regular meetings in the manner approved on April 20.

On May 1, 2020 the Province issued an order allowing for public hearings to be held electronically. Along with possible adjustments to the public hearing process after the May 12 meeting, staff will consider the need for and explore options to facilitate electronic participation and report back to Council at a future date.

### **Conclusion:**

The recommended changes are expected to streamline certain development approvals, ensure Council and the public have access to more information earlier in the approval process, and focus public hearings on receiving input from the public. The video livestream and recordings of Council meetings support the public's ability to access information and see how Council decisions are made, which is even more relevant during the COVID-19 pandemic. The changes would continue to meet legislative requirements and rules of procedural fairness and to facilitate public participation.

While these are recommended as permanent changes, they would also enable the City to better meet or exceed the public health guidelines and requirements of the Provincial Health Officer during the COVID-19 pandemic. Specifically, having fewer DVP applications considered at Tuesday PM Council meetings and reducing the amount of time needed for public hearing items limits how much in-person interaction is needed while continuing to facilitate public participation in these processes.

**Internal Circulation:**

Planning & Development Services

**Considerations applicable to this report:**

***Legal/Statutory Authority:***

*Local Government Act s. 464* – Requirement for public hearing before adopting bylaw

*Local Government Act s. 498* – Development variance permits

***Legal/Statutory Procedural Requirements:***

*Local Government Act s. 465* – Public hearing procedure

*Local Government Act s. 499* – Development variance permits notice to affected property owners and tenants

**Considerations not applicable to this report:**

*Existing Policy:*

*Financial/Budgetary Considerations:*

*External Agency/Public Comments:*

*Communications Comments:*

Submitted by:

L. Bentley, Deputy City Clerk

**Approved for inclusion:** S. Fleming, City Clerk

cc:

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