

April 27, 2020

To: Councillor Keating

From: Stuart Dalglish

Re: Response to Administrative Inquiry from 2020 February 24 - Working Area of an Operating Hazardous Waste Management Facility

This summary provides a response to the 2020 February 24 Council meeting inquiry submitted by Councillor Keating. The Administrative Inquiry is about the regulation applied to lands surrounding hazardous waste facilities, one type of provincially regulated waste management facility, and proposed opportunities for changes to The City's approach to the regulations of these sites through the City Charter (see Attachment 1 – Administrative Inquiry).

BACKGROUND

The Subdivision and Development Regulation (SDR) establishes setbacks between provincially defined waste management facilities (WMF) and four types of prohibited uses: schools, hospitals, food establishments, and residences. WMFs include wastewater treatment facilities, landfills, waste storage sites, and hazardous waste facilities. The setback areas were established to protect adjacent properties and their users, from potentially noxious activities.

The City is solely responsible for implementing the SDR setbacks, ensuring that no prohibited uses are approved without provincial consent. In order for a prohibited use to be allowed to operate within a setback area, a waiver for consent to vary the setback is required from Alberta Environment and Parks (AEP). The City is responsible for submitting a request for consent to vary a setback to AEP as part of a Development Permit or Subdivision Application.

This regulatory setting can be challenging to land owners, businesses, developers, consultants, and The City. Many landowners have expressed to Administration their frustration with the current SDR and variance process.

On 2020 January 15, City Council accepted the findings of report UCS2019-1502 Waste Management Storage Site Operational Practices. The results of this work improved how the SDR is implemented by The City, but was unable to address concerns raised in this Administrative Inquiry related to provincially regulated setback areas and variance requirements.

The opportunity for Council and Administration to explore comprehensive solutions to the issues with the SDR raised through this Administrative Inquiry, as well as further considerations to protect public health, will be explored through the response to Notice of Motion C2018-1337 Subdivision and Development Regulation Setbacks from 2018 November 19. The Notice of Motion directs Administration to explore implementing City Charter powers to vary the requirements of the SDR, including setback areas and prohibited use definitions (refer to Attachment 2 – Previous Council Direction). As described in Item #2 below, this work is underway.

The Administrative Inquiry asked the following five questions:

1. If resources are a major concern, can we bring in any outside resources?

Resources required for this work are being drawn from the City Planning & Policy Service. There is sufficient resource capacity for this work, yet the work must be planned to consider other City Planning & Policy Service work initiatives (see #2).

Outside resources, and more specifically external consultants, will be considered to inform work where Administration does not have either the resources or expertise. It is likely that Administration will require expertise from risk consultants who are familiar with waste management and hazardous waste setbacks. Administration anticipates having sufficient budget for external consultant resourcing.

2. When will this work plan start?

Project scoping for this work is now underway.

Administration's work in response to Notice of Motion C2018-1337 Subdivision and Development Regulation is set to return to Council through the SPC on Planning and Urban Development no later than Q2 2021. This timing was approved at the 2020 February 03 Council meeting as part of the City Planning & Policy Workplan 2020 (PUD2020-0016), which had earlier been unanimously supported at the 2020 January 15 meeting of the Standing Policy Committee on Planning & Urban Development.

3. What can we do to streamline the process, lessening the negative impacts on business owners and developers?

City processes have been streamlined, to the extent possible under the current regulatory framework through improvements to our planning application processes, and by better supporting businesses and City staff. Improvements have been made to The City's planning application intake processes to better serve applicants through early identification of sites subject to the SDR. This includes: new application submission requirements and a use questionnaire, updated internal mapping and parcel warnings, and updated support materials for City staff to help guide

applicants through SDR requirements and processes.

New communication procedures with AEP ensure The City is notified of new WMF approvals, enabling The City to require the appropriate municipal planning (i.e. land use) approvals from the WMF owner/operator. This enables the Development Authority to consider the impacts a new WMF and prohibited use setback area will have on nearby businesses.

While The City remains subject to the SDR and provincial variance review processes, the response to Notice of Motion C2018-1337 Subdivision and Development Regulation Setbacks, will explore the options granted under the City Charter for The City to assume additional regulatory responsibilities of the Subdivision and Development Regulation, as well as any other solutions which arise through the project work. This work will include evaluating risks and liabilities to The City, while mitigating the burden on business owners and developers.

4. If the concern is funding, is there a way we can utilize a cost-recovery model? I.E. Can we incur an additional fee for businesses dealing with Hazardous Waste Materials?

While at this time it is too early to comment on whether funding, and/or a cost recovery model, would contribute toward an improved waste management facility/setback regulatory setting, this will be explored as part of the project work.

5. Can we look at different categories for hazardous waste sites so that we limit the need for exemption, if it is appropriate?

Waste management site definitions are regulated under the Environmental Protection and Enhancement Act (EPEA), which the Calgary Charter does not have authority to amend. While the waste management facilities defined under EPEA cannot be amended by The City, the response to NOM C2018-1337 will evaluate The City's ability to reduce setbacks established in the SDR for low risk scenarios and. All improvement options will be considered, evaluated and included in the report.

Should you have any further questions on this topic, please contact myself or David Galoska, Senior Planner - (403) 268-1991 or david.galoska@calgary.ca.

Sincerely,
Stuart Dagleish

General Manager



Memo

Planning & Development

T 403-268-2601 | F 403-268-8107 | Mail code #8138

800 Macleod Trail, PO Box 2100, Station M, Calgary, Alberta

Enclosed:

- Attachment 1: Administrative Inquiry - Working Area of an Operating Hazardous Waste Management Facility
- Attachment 2: Previous Council Direction

Attachment 1: Administrative Inquiry - Working Area of an Operating Hazardous Waste Management Facility

Date: February 21, 2020

Submitted by Councillor: Shane Keating

Re: Working Area of an Operating Hazardous Waste Management Facility

Businesses operating within 450m of a Working Area of an Operating Hazardous Waste Management Facility are being impacted negatively. Some of the facilities that have this designation share the same requirements as a chemical processing plant or landfill despite being relatively safe work with no risk of exposure of chemicals to employees or residents within the immediate area.

The Businesses and developers that are seeking a variance through the Province to operate near these locations are faced with a difficult, uncertain and drawn out process. This procedure stalls meaningful development, commerce and creates conflict between landlords and renters.

I understand that The City has the ability under the City Charter through bylaw to authorize a subdivisions authority, circumventing Provincial Ministerial Approval. This seems like the best approach for businesses, and as we explore to what capability we can employ this strategy. I think it is important to ask these questions

- Is this an issue of resources? Do we have the budget and staff to take on the regulation?
- If resources are a major concern, can we bring in any outside resources?
- When will this work plan start?
- What can we do to streamline the process, lessening the negative impacts on business owners and developers?
- If the concern is funding, is there a way we can utilize a cost-recovery model? I.E. Can we incur an additional fee for businesses dealing with Hazardous Waste Materials?

Can we look at different categories for hazardous waste sites so that we limit the need for exemption, if it is appropriate?

Attachment 2: Previous Council Direction - Notice of Motion from 2018 November 18 of the Regular Meeting of Council

Item #10.1.3



Report Number: C2018-1337
Meeting: Regular Meeting of Council
Meeting Date: 2018 November 19

NOTICE OF MOTION

RE: SUBDIVISION AND DEVELOPMENT REGULATION SETBACKS

Sponsoring Councillors: COUNCILLORS CARRA, COLLEY-URQUHART & KEATING

WHEREAS the Subdivision and Development Regulation defines the setback distance from a development or subdivision for a residence, school, hospital, or food establishment to an operating or non-operating landfill (300 m – 450 m), waste storage site (300 m), and operating and non-operating hazardous waste management facilities (450 m);

WHEREAS the setback distances that are established in the Subdivision and Development Regulation can have a significant negative impact on landowners and operators that are within the setbacks;

WHEREAS Council is supportive of businesses and wants to help facilitate development;

WHEREAS there may be low risk developments for which the setback established in the Subdivision and Development Regulation may be overly cautious; and

WHEREAS The City of Calgary Charter, 2018 Regulation, effective January 1, 2018, gives Council the power to modify the setback distances in the Subdivision and Development Regulation and the definitions of “school”, “hospital”, or “food establishment”.

NOW THEREFORE BE IT RESOLVED THAT COUNCIL:

Direct Administration to:

1. Scope out the requirements and implications of modifying the Subdivision and Development Regulation setbacks or the definition of “food establishment” in accordance with the Calgary Charter Regulation including analyzing:
 - i. The risks and liabilities The City could assume;
 - ii. The benefits and disadvantages;
 - iii. Any challenges from an operational perspective; and
 - iv. The additional resources that may be required for implementation.

2. Report back to Council through the SPC on Planning and Urban Development no later than Q3 2019 unless additional resources are required to complete the scoping exercise described above, and no funding source can be identified, in which case return to Council as soon as reasonably possible.

Minutes excerpt of the 2018 November 18 of the Regular Meeting of Council

10.1.3 Subdivision and Development Regulation Setbacks, C2018-1337

That with respect to Notice of Motion C2018-1337, the following be adopted, **after amendment**:

NOW THEREFORE BE IT RESOLVED THAT COUNCIL:

Direct Administration to:

1. Scope out the requirements and implications of modifying the Subdivision and Development Regulation setbacks or the definition of “food establishment”, **housing and/or other development types** in accordance with the Calgary Charter Regulation including analyzing:
 - a. The risks and liabilities The City could assume;
 - b. The benefits and disadvantages;
 - c. Any challenges from an operational perspective; and
 - d. The additional resources that may be required for implementation.
2. Report back to Council through the SPC on Planning and Urban Development no later than Q3 2019 unless additional resources are required to complete the scoping exercise described above, and no funding source can be identified, in which case return to Council as soon as reasonably possible.

MOTION CARRIED