

## Streamlining Application Process and Mitigating Risk in Subdivision and Development Regulation Setbacks

### RECOMMENDATION(S):

That the Standing Policy Committee on Planning and Urban Development recommend that Council receive this report for the Corporate Record.

### RECOMMENDATION OF THE STANDING POLICY COMMITTEE ON PLANNING AND URBAN DEVELOPMENT, 2021 JULY 07:

That Council receive this report for the Corporate Record.

## HIGHLIGHTS

- Administration has found effective mechanisms to support applications in Subdivision and Development Regulation (SDR) setbacks that do not require invoking the Calgary City Charter.
- **What does this mean to Calgarians?** The improved process balances a business-friendly approach to applications while maintaining safety for Calgarians, avoiding the possibility of changing The City's liability profile, and respecting budget and available resource considerations.
- **Why does this matter?** Applications for restricted uses in a setback area are benefitting from a business-friendly approach and increased clarity in processing the application.
- Invoking the Calgary City Charter would require additional time and resources and is not expected to result in significant improvement to the application process.
- The City has been made aware that the Province is imminently considering regulatory changes to the SDR. The City will monitor for these potential changes to setback regulations before spending additional time and resources to enact City Charter powers.
- A working group has been refocused to track the progress of applications and triage how to go forward with complex applications, and regular meetings have been scheduled with the Province to ensure application reviews are not delayed.
- The City has launched a website with an interactive map and updated the Waste Management Facility Setback and Variance Application Guide to provide clarity and consistency to applicants, facility operators, and City staff.
- Through Notice of Motion PFC2021-0222, Council directed Administration to establish a separate working group to investigate ways of minimizing negative impacts of waste and recycling sites. The expertise in this group will be leveraged and used to review applications and monitor the application process.
- In November 2018, Council directed Administration, through Notice of Motion C2018-1337, to scope out the requirements and implications of modifying the SDR setbacks or the definition of "food establishment", housing and/or other development types in accordance with the Calgary City Charter
- Strategic Alignment to Council's Citizen Priorities: A well-run city
- Background and Previous Council Direction is included as Attachment 1.

## DISCUSSION

### Background

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There are approximately 40 waste management facilities (WMFs) in Calgary, including landfills, wastewater treatment plants, hazardous waste management facilities, and storage sites, which may present risk to adjoining uses and the health and safety of Calgarians. To manage potential risks, the Province requires setback distances around WMF sites. Municipalities are prohibited from approving subdivision and development permit applications in these setback areas for four sensitive categories of use: school, hospital, food establishment and residence. Similarly, there are prohibitions against approving new and expanding WMFs within the prescribed setbacks from the four noted categories of uses. Applications for sensitive uses within the SDR setback are required to request a variance from the Province and the application requirements are dependent on the category of the WMF. For wastewater treatment facilities and landfills, applicants are also required to submit an engineering report. All facilities require a letter of consent from the operator of the WMF and the landowner within the setback. Consent is typically not given to applications in setbacks of City facilities. Attachment 2 shows the application requirements in setbacks of WMFs and accompanying statistics. The level of risk depends on the proposed use for which a variance is being requested and the site's context. In Calgary, approximately 1,750 parcels, or 0.5 per cent of the City's total, are potential development sites located in an SDR setback, as illustrated in Attachment 3. Of these, 27 parcels are in strategic growth areas, including Chinook, South Hill, and Quarry Park.

### **Application for Variance Process**

The City can approve sensitive uses within a setback area with consent from the Province and consent from the waste management facility operator. This generally requires a context-specific engineering report, including a risk assessment, which both The City and the Province review. The Province also circulates to the health authority, Alberta Health Services (AHS), for review. This process takes an average of 51 days, dependent on the site's context, can add cost to an application, but incorporates Provincial and AHS expertise and input as the regulatory authority for WMFs to inform the City's decision. Attachment 4 shows that of the 42 applications received since November 2019, none have been refused consent for a variance by the Province. Applications for variance account for approximately 0.4 per cent of all development and subdivision applications.

### **Improvements Made to Date**

While the existing system adds time to processing an application and costs to an applicant, it is required to address health and safety risks, meet regulatory requirements, and ensure due diligence by The City. Often The City has limited control over the status of applications waiting for required documents, including Engineering Reports and letters from the applicant and WMF operators. The process has improved through the establishment, in August 2020, of the Waste Management Facility Applications Coordination Team ("The Coordination Team") (Attachment 5). This is a cross-departmental team comprised of subject matter experts and file managers for applications in SDR setbacks. One of their roles is to track and monitor applications in SDR Setbacks. This team has developed an SDR Setbacks website, an online interactive map, and the updated Waste Management Facility and Setback Variance Guide, which clarifies application requirements and processes in SDR Setbacks and was recently supported by the Executive Leadership Team. Community Planning teams are currently being trained on the improvements found in this guide. To address the time taken by

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the Province to process applications, the City has initiated regular meetings with the appropriate representatives.

### **Requirements and implications of modifying the Subdivision and Development Regulation setbacks or definitions**

Under the Calgary City Charter, the City cannot change or make new setback distances, but it does allow us to define school, hospital and food establishment. Invoking the Charter to create these definitions may add complexity to a problem that has potentially been resolved by the increased clarity provided by the recently released [Waste Management Facility and Setback Variance Guide](#). Administration will continue to monitor the success of the guide in creating clarity and simplifying the application process through the Coordination Team, and may consider amendments to the Land Use Bylaw at a later date should they be required. Specific to food establishments, the SDR definition is currently aligned with the definition in the Province's Food Regulation. The City's Land Use Bylaw and the Province's Food Regulation have different reasons for defining uses (i.e. to segregate incompatible uses versus defining uses for inspection purposes). There are 114 defined uses in Land Use Bylaw 1P2007 that may be considered "food establishment", as defined by the Province. Although there may be advantages of modifying the definition of "food establishment", it could take significant resources which may not be required due to future Provincial legislation which has the potential to significantly change the WMF setback variance process for all municipalities.

### **Potential Changes to Provincial Regulation**

The Province is considering amendments to legislation and regulations. These amendments may impact the current setbacks and/or the variance process. The version of the draft changes that have been reviewed by The City appear as though they achieve the same outcome as invoking the City charter would, meaning the work Administration would do to pursue this Notice of Motion's direction may be redundant. Creating the required bylaw to take on Charter powers when the powers may potentially be given to the City would unnecessarily use constrained City resources.

### **Notice of Motion PFC2021-0222**

Since Notice of Motion C2018-1337, a further Notice of Motion has directed Administration to establish an interdepartmental working group to explore opportunities to minimize negative impacts of waste and recycling sites, which may include creating enforceable development and operating standards. This working group established through the most recent Notice of Motion can be used to bring their specialized expertise to reviewing applications on the 1,750 parcels within SDR Setback areas and to help expedite applications where risks are determined to be low, while maintaining safety and health.

### **Cost Benefit Analysis**

Through the work of the new working group and the Coordination Team, Administration will continue to review applications through the existing variance process. Administration does not recommend removing the role of the Province in the variance process now, because the low number of applications, the lack of a City subject matter expertise and the potential for legislative change do not seem to justify the additional costs and resources this would require. In addition to what may be required of the City

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through legislative amendments, Administration will continue to monitor the cost-benefit of taking on the responsibility of granting variances without Provincial consent.

### **Recommendations**

Administration recommends the City not invoke the Calgary City Charter at this time, and that applications requiring SDR variances continue to be reviewed through the existing process using the Waste Management Facility and Setback Variance Guide and the Waste Management Facility Applications Coordination Team. The City will monitor for potential upcoming legislation changes affecting the SDR.

### **STAKEHOLDER ENGAGEMENT AND COMMUNICATION (EXTERNAL)**

- Public Engagement was undertaken
- Public Communication or Engagement was not required
- Public/Stakeholders were informed
- Stakeholder dialogue/relations were undertaken

No public engagement was conducted. Administration is aware of concerns from business owners and others about the setbacks and variance process. Operators of waste management facilities and Administration have expressed concern with increased exposures to risk due to uses in surrounding setback areas.

### **IMPLICATIONS**

**Social** – Ensuring the process for review of these types of applications is thorough reinforces public trust in government by putting a focus on maintaining health and safety.

**Environmental** - Making use of development sites in Calgary reduces the need for urban expansion and can help reduce greenhouse gas emissions. Proper review will mitigate potentially significant environmental risks.

**Economic** - If a rigorous review is not performed with the initial application, there could be long term impacts that create more hurdles for businesses later. These impacts could mean funding is required to upgrade facilities, repair damages, evacuate, or eventually move a business, causing disruption. Up front review provides a service to customers that helps in the long run by ensuring issues are identified and addressed.

### **Service and Financial Implications**

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### No anticipated financial impact

### RISK

**Legal Risks and Liabilities of invoking the Charter** – Changing processes or assuming authorities may place more risk and liability on The City. Any alterations to the policy or process need to be carefully considered.

**Risk Assessment Framework** – Future Provincial legislation has the potential to significantly change the WMF setback variance process for all municipalities. Although The City has the ability to assess risk, we may not have the expertise or information required to assess risks currently evaluated by the Province and AHS. A risk assessment framework would be a useful tool to ensure the City has a comprehensive and consistent approach to mitigating risk, and would help define low-risk uses. The working group is currently exploring the creation of a framework to assist in decision making.

**Improvements Made Do Not Result in Reduced Time and Costs** – The improvements made to date will not reduce costs of engineering reports for applicants. Although the updated Waste Management Facility and Setback Variance Guide can help expedite files through improved clarity, it may not reduce the total application time.

### ATTACHMENT(S)

1. Attach 1-Previous Council Direction Background
2. Attach 2-Application Summary Statistics
3. Attach 3-Waste Management Facility Map
4. Attach 4-Application Numbers Summary
5. Attach 5-Working Groups Information

Department Circulation

General Manager/Director	Department	Approve/Consult/Inform
Stuart Dalgleish	Planning and Development	Approve
Josh White	Planning and Development	Approve
Debra Hamilton	Planning and Development	Inform