

DATE OF MEETING FEBRUARY 6, 2023

AUTHORED BY KAREN ROBERTSON, DEPUTY CITY CLERK

SUBJECT PUBLIC HEARING PROCESS POLICY AMENDMENT

## **OVERVIEW**

### **Purpose of Report**

To present amendments to the Public Hearing Process Council Policy based on recent case law as recommended to Council at a recent Development Services Council Orientation workshop.

### **Recommendation**

That Council endorse Council Policy 233 – Public Hearing Process Policy as attached to the 2023-FEB-06 report by the Deputy City Clerk.

## **BACKGROUND**

As part of a Development Services Council Orientation held in November, 2022, Council was provided with an overview by the City Solicitor on matters related to public hearing legal responsibilities and processes. Some of the information provided included a discussion on the recent changes to the *Local Government Act* as it relates to holding public hearings on proposed zoning bylaws if they are consistent with the Official Community Plan and case law regarding personal information, as well as clarity on the process for:

- receiving written submissions during a public hearing;
- improper conduct during a public hearing; and
- posters and placards at public hearings.

Based on the discussion, the City Solicitor recommended that minor amendments be made to the Public Hearing Process Policy as attached to the Staff report. Details are outlined in the discussion section of the report.

## **DISCUSSION**

The following minor amendments are proposed to the Public Hearing Process Policy:

- Written submissions – currently the cut-off time for receiving written submissions for Council's consideration is 12:00 noon on the date of the hearing. Submissions received by that time are provided to Council in an un-redacted form and a redacted version (with address, phone number, and email removed) placed on the website so members of the public may view them. Hard copies of the redacted submissions are also compiled and

placed in the Public Hearing binder which is updated as submissions are received and made available for viewing at the City's Service and Resource Centre, and at the hearing. Submissions received after the 12:00 noon cut off time must be submitted in person at the hearing in order to form part of the record.

The challenge with accepting written submissions at the Public Hearing is that there is the potential during a more contentious public hearing for an individual or a group of individuals to submit several pieces of correspondence (on behalf of several citizens) making it challenging for the Corporate Officer to read out at the hearing. Calling a recess for Council members to review the correspondence is also not a viable option as members of the public have a right to know what was submitted. If too unwieldy, the hearing would have to be recessed and carried over to a second date so that Council and the public have an opportunity to review the newly submitted material, only for the process to potentially happen again when the hearing is reconvened.

Case law states that there is no legal requirement to accept written submissions during the hearing (provided this is clearly stated in Council's policy, and in the Notices). Therefore, the City Solicitor recommends that the Public Hearing Process Policy be amended to remove the phrase that states that written submissions would be accepted at the hearing. Instead, he suggested that the deadline for receiving written submissions be expanded from 12:00 noon to 2:00 pm the day of the hearing. Anyone missing that deadline always has the opportunity to read their submission in-person or by calling in during the hearing. This process meets the procedural fairness test of providing a reasonable opportunity for members of the public to provide their written or verbal comments. The only drawback to the extension is that it will shorten the timeframe that Council has to review submissions received on the final day.

- The second amendment proposed relates to the time allotted for the applicant to verbally address Council. While the existing policy is fair in providing the applicant 10 minutes to address Council at the beginning of the hearing, there may be instances where the applicant may need additional time to further expand on their application. To clarify this, amendments were made to the Policy noting there will be an opportunity for an applicant to complete their submission, clarify points raised, or respond to questions after members of the public have spoken.
- Clarity was also sought as it relates to how to address any inappropriate behaviour at a hearing. To ensure the hearing is fair, where no one feels intimidated to express their views, the Policy has been expanded to note that the Chair will ask any person guilty of improper conduct to either refrain or they will be asked to leave the hearing. If the individual refuses when asked to do so, the Chair has the authority under the *Community Charter* to ask the RCMP to remove that individual.
- The final proposed amendment relates to poster and placards during the Public Hearing. The question has been asked in the past and the City Solicitor recommended that they not be permitted once the hearing commences to ensure that no one feels intimidated to give their point of view. Freedom of expression would not be violated as every person is provided the opportunity to provide written or verbal submissions.

Other information provided by the City Solicitor regarding rules of procedural fairness included:

- Citizens speaking at the hearing must provide their first and last name but there is no legal requirement for them to provide their address. An individual may still volunteer their address at the hearing; however, going forward, it will not be recorded in the minutes.
- In addition to providing copies of written submissions on the City's website, a link to those submissions will also be provided within the Public Hearing agenda itself.
- Written submissions should be removed from the website once the zoning or OCP bylaw has been adopted, defeated, or abandoned.
- Anonymous written submissions will not be taken into account.
- Speakers at public hearing must keep their comments specific to the proposed land use bylaw.

The amended policy with tracked changes is noted as Attachment 1 to the report. The clean copy is noted as Attachment 2. Legal counsel has also reviewed the proposed changes.

Should Council support the proposed amendments, Staff would update the Chair's script and future Public Hearing Notices to reflect the amendments and would be applicable for the March 16, 2023 Public Hearing.

## **OPTIONS**

### **Option 1:**

That Council endorse Council Policy 233 – Public Hearing Process Policy as attached to the 2023-FEB-06 report by the Deputy City Clerk.

- By supporting option 1, Council will be incorporating the changes as recommended by the City Solicitor which would provide clarity regarding the rules of procedural fairness related to receiving written submissions, what personal information is required, conduct, and the displaying of posters and placards at Public Hearings. It also incorporates an extension for receiving written submissions from 12:00 noon to 2:00 pm.
- The drawback to a 2:00 pm deadline is that it will reduce the amount of time that staff has to compile any final submissions and the amount of time Council has to review those submissions on the day of the hearing.

### **Option 2:**

Council direction is sought.

Should Council wish to provide alternate direction to the amendments put forward by Staff, a further Staff report may be required.

### **SUMMARY POINTS**

- Council was provided an orientation session in November, 2022 on matters related to public hearing legal responsibilities and processes.
- Suggestions were made for amendments to the Public Hearing Process Council Policy as it relates to receiving written submissions during a public hearing, improper conduct during a public hearing; and posters and placards at public hearings.
- Should the amended policy be supported by Council, the Policy, Chair's script, and notices would be amended to reflect the proposed changes and would be applicable for the March 16, 2023 Public Hearing.

### **ATTACHMENTS:**

Attachment 1 – Public Hearing Process Policy No. COU-233 (red lined version)

Attachment 2 – Public Hearing Process Policy No. COU-233 (clean copy)

#### **Submitted by:**

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Deputy City Clerk

#### **Concurrence by:**

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