

DATE OF MEETING SEPTEMBER 19, 2022

AUTHORED BY KAREN ROBERTSON, DEPUTY CITY CLERK

**SUBJECT OFFICER DESIGNATION AND DELEGATION OF AUTHORITY
BYLAW & APPEALS PROCEDURE BYLAW**

OVERVIEW

Purpose of Report

To present Council with the following bylaws:

- Officer Designation and Delegation of Authority Bylaw that will streamline municipal decision making on more routine responsibilities of Council; and
- Appeals Procedure Bylaw that will provide a consistent process when matters that have been delegated to staff are to be reconsidered by Council.

Recommendation

Officer Designation and Delegation of Authority Bylaw

That “Officer Designation and Delegation of Authority Bylaw, 2022 No. 7353” (a bylaw to provide for the appointment of Officers and the Delegation of Authority) be given first reading.

That “Officer Designation and Delegation of Authority Bylaw, 2022 No. 7353” be given second reading.

That “Officer Designation and Delegation of Authority Bylaw, 2022 No. 7353” be given third reading.

Appeals Procedure Bylaw

That “Appeals Procedure Bylaw, 2022 No. 7354” (a bylaw to establish the procedure for hearing appeals) be given first reading.

That “Appeals Procedure Bylaw, 2022 No. 7354” be given second reading.

That “Appeals Procedure Bylaw, 2022 No. 7354” be given third reading.

BACKGROUND

Officer Designation and Delegation of Authority Bylaw

Through Council’s Strategic Plan, staff continue to review bylaws that are outdated, ineffective or inconsistent with Council’s current objectives and bring forward either amendments to those bylaws or new streamlined versions for Council’s consideration.

As noted at the 2022-JUL-04 Council meeting, Staff advised that they would be bringing forward a new Officer Designation and Delegation of Authority Bylaw.

The current Officers Appointment and Delegation Bylaw is 16 years old and much of the delegated authority within the bylaw pertains to land use matters. The provisions that outline the parameters for that delegated authority point to outdated sections of the *Local Government Act (LGA)*. This makes the bylaw challenging to interpret for Council, staff, and members of the public, and given the frequency that development applications are submitted, it is important to update those sections to reflect the current sections of the *LGA*.

There are several other bylaws where Council has delegated authority to Officers and Employees. The challenge has been in identifying which bylaws contain that authority. To rectify this, staff developed an information schedule as part of the Officer Designation and Delegation of Authority Bylaw that points to all bylaws where there is delegated authority to staff. That way, Council, staff, and the public are easily able to see which staff have delegated authority, what those delegated authorities are, and which bylaws provide that delegated authority.

Clarity was also needed as it relates to signing authority on certain agreements and permits. For example, the Parks, Recreation and Culture Administration Bylaw gives the General Manager, Parks, Recreation and Culture broad delegated authority to administer all aspects of the Bylaw. As part of the General Manager's functional responsibilities through this Bylaw, Facility Use Agreements need to be approved when individuals or organizations use parks and recreation facilities. There are approximately 5,000 of these agreements entered into each year. Most are for short term rentals, and as such, it makes sense for staff to continue approving these agreements. However, there are some Facility Use Agreements that are higher level, multi-year agreements that should be considered by Council.

To promote transparency, and to assist staff in making the distinction as to which agreements and permits are within their purview to authorize when a bylaw is silent, a new section within the bylaw has been added that lists the specific types of agreements and permits that staff would be eligible to authorize. Time limit and dollar value parameters have also been added. That way, if the document is not specifically listed in the new Officer Designation and Delegation of Authority Bylaw or exceeds the time limit or dollar value parameters, or is not identified in any of the bylaws noted in Schedule "A" (such as authority assigned to Building Inspectors to authorize on building permits through the Building Bylaw) it must go to Council for approval.

Given the number of changes required to facilitate the above, Staff are bringing forward a new bylaw as opposed to an amendment to the existing bylaw. When bringing forward new bylaws, staff also look for opportunities to bring forward other improvements. In this instance, some additional provisions are being proposed to streamline Council's decision making process (i.e. delegating the appointment of Bylaw Enforcement Officers to staff). Details on new provisions are outlined in the Discussion section of this report. Other provisions, including the appointment of Officers, remain unchanged from the existing bylaw.

Appeals Procedure Bylaw

When Council considers delegating its authority, it must also decide whether reconsideration mechanisms should be put in place. If Council reconsiders too many decisions it will defeat the purpose of the delegation. However, if the Officer or Employee is making important decisions

that impact an individual's rights in a significant way (such as issuing certain types of Development Permits under the authority of the Officer Designation and Delegation of Authority Bylaw) then an opportunity for reconsideration should be implemented to ensure fairness and political accountability.

In some cases, the requirement is mandated by statute, such as when a staff member suspends or cancels a business licence under the authority of the Business Licence Bylaw or cancels a Chauffeur's Permit. Others are optional and identified through municipal bylaws, such as the option to reconsider decisions made by staff under the Property Maintenance and Standards Bylaw.

While reconsideration provisions currently exist within applicable City bylaws, the process and timeline for how the reconsideration process takes place is inconsistent. In some bylaws, such as the Business Licence Bylaw, the process is outlined in detail. In others, the language is either vague or inconsistent, giving an applicant 14 days, 30 days, or 30 *business days* to appeal a decision made by staff. There are also bylaws, such as the Sewer and Waterworks Rate and Regulation Bylaws, where delegated authority has no reconsideration provisions. In these two instances, the General Manager, Engineering and Public Works is delegated the authority to have a water or sewer connection shut off for reasons outlined in the bylaw. Because these are important decisions that could impact an individual in a significant way, an opportunity for reconsideration should be provided for reasons of good governance.

To ensure the right for reconsideration is conducted in a consistent manner, staff are bringing forward a single comprehensive Appeals Procedure Bylaw that outlines the procedure for how all reconsideration matters would be addressed. Similar to the Officer Designation and Delegation of Authority Bylaw, a Schedule has also been developed that points to the various bylaws where reconsideration provisions have been identified. The default timeline in the bylaw is set at 30 days except for the Property Maintenance and Standards Bylaw, the Flood Prevention Bylaw, and Management and Protection of Trees Bylaw. The rationale for keeping the reconsideration timeline at 14 days for these bylaws is that infractions are significant, in that they often directly impact other residents; therefore, time is of the essence.

DISCUSSION

Officer Designation and Delegation of Authority Bylaw

As outlined above, a council can delegate its powers, duties and functions to a committee, Officer or Employee, or to another body established by council.

Delegation is an opportunity for Council to streamline some of its municipal decision making by empowering staff to conduct detailed and focused consideration on some of the more routine responsibilities of Council while allowing Council to focus on the broader and longer-term needs of the municipality. Some of the more common reasons for providing delegated authority include:

- increased efficiency of service delivery;
- greater responsiveness to the clients of the service; and
- improved functioning of Council business.

For the reasons cited in the Background section of the report, staff were asked to review the Officers Appointment and Delegation of Authority Bylaw. Staff initially took the approach of having all delegated authorities contained in one comprehensive Delegation of Authority Bylaw, similar to what the City is doing with its fees and charges. However, through the review, 37 bylaws were identified where staff is provided various delegated authorities and each of those bylaws would have required an amendment. Also, in reviewing other municipal Delegation of Authority Bylaws, it is best practise to retain the delegation within the subject matter bylaw.

Staff pursued the option of developing a new Officers Designation and Delegation of Authority Bylaw with an Information Schedule attached to the Bylaw that points to all other regulatory bylaws where authority has been delegated to staff. Other proposed changes or additions included in the bylaw have been based on other municipal delegation bylaws that have had legal reviews. Highlights of the new or significantly revised provisions are noted below:

Section 2 – Scope of the Bylaw

A new scope section has been added stating that unless powers have been specifically delegated by bylaw, all powers, duties and functions of Council remain with Council and that reconsideration decisions will be in dealt with in accordance with the City's Appeals Procedure Bylaw.

Section 4 – Schedules:

This section identifies that on Schedule "A", there is a reference list of all other regulatory bylaws where staff have delegated authority.

Section 9 – Notices

This section identifies the staff that have been delegated the authority to give notices on behalf of Council. This is an administrative function that is typically overseen by the Corporate Officer; however, given the City's size, there are other staff that administer notice provisions and therefore the bylaw should state which staff person, on behalf of Council, is overseeing which notice.

Section 10 – Personnel administration and appointments:

Under Section 147 of the *Community Charter* the Chief Administrative Officer (CAO) is responsible for the overall management of the operations of the municipality. Further delegated duties to the CAO are also outlined in the Management Terms and Conditions Bylaw.

Additional authority is being sought to give the CAO the delegated authority to:

- appoint Approving Officers, which will streamline Council's agenda; and
- appoint the CAO as a Corporate Officer for the purposes of ensuring that accurate minutes are prepared when the Corporate Officer or designate is excused from the meeting or part of the meeting.

Section 11 – Agreements – Miscellaneous

A couple of new sections were added to this section that propose to give the Director of Finance the ability to enter into and execute agreements in relation to grant monies for projects approved

by Council and to the Director of Information Technology to enter into agreements for information sharing, when appropriate.

Section 13 – Authority to Settle Claims/Liability Suits

The Municipal Insurance Association oversees claims on behalf of the City related to bodily injury, personal injury, and property damage liability. For claims outside of this scope, staff is seeking authority for the CAO to settle uninsured claims and liability suits up to \$100,000 subject to sufficient funds having been allocated and approved by Council under the financial plan. Examples of where this delegated authority may be used would be for settling a breach of contract claim, which is not insured by the Municipal Insurance Association.

Section 14 – Bylaw Enforcement

Several times per year, Council receives reports requesting that it appoint certain individuals to be Bylaw Enforcement Officers under Section 36 of the *Police Act*. If utilizing the *Police Act* to make that appointment, the appointment must be done by Council. However, under the *Community Charter*, the authority exists whereby Council can delegate that authority to an Employee. If supported, Section 15.1 would provide authority to the Chief Administrative Officer and General Manager, Development Services to appoint Bylaw Enforcement Officers.

Section 15 – Land Purchases

This section proposes to provide authority for the Director, Corporate Business and Development to acquire land, or interest in land (up to \$75,000) subject to the project being approved by Council and sufficient funds having been allocated in the budget for the purchase.

Section 20 – Temporary municipal land and street use

- Section 20.1 – Facility Rental Agreements (Parks and Municipal Facilities)
The General Manager of Parks, Recreation and Culture has delegated authority to oversee administration of the Parks, Recreation and Culture Regulation Bylaw. This section would clarify that Parks, Recreation and Culture Managers have the authority to enter into and execute short term (up to one year) Facility Rental Agreements. These agreements, typically covering a few hours to a few days, are administrative in nature. Examples would include pool rentals, room rentals, gym, ice and dry floor rentals, etc. Approximately 5,000 of these agreements are signed yearly. Multi-year Facility Use Agreements or Contracts (over one year in duration) such as the Agreement with the Nanaimo Clippers or Buccaneers would come to Council for approval.
- Section 20.2 – Licence of Use Agreements (City Owned Parkland)
This section proposes to give delegated authority to the General Manager, Parks, Recreation and Culture to enter into Licence of Use Agreements for City owned parkland with a market value rent of less than \$50,000. Examples of these types of agreements include the Soccer Club renting the Sports Pavilion at Beban Park, the Nanaimo BMX Association, and vending services at the Frank Crane Arena. There are approximately 40 of these agreements signed each year. Any Licence of Use Agreements over \$50,000 would come to Council for approval.

- Section 20.3 – License of Use Agreements (Municipal Land)

This section proposes to give delegated authority to the Director, Corporate Business and Development to enter into License of Use Agreements for municipal land. These agreements give the entity use of City property but the use is not exclusive. They are not registered at land titles and often include a short (i.e. 30 day) cancellation clause. Most such agreements are with not-for-profits and are under \$5,000 annually, such as the Tourism office on Northfield Road. However, there is one organization that pays approximately \$4,000 per month so the limit was set at \$50,000. Licence of Use Agreements for Municipal Land over \$50,000 would come to Council for approval.

- Section 20.4 – Assignment of Leases or Licenses (Parks Spaces)

This section proposes to give delegated authority to the General Manager, Parks, Recreation and Culture to assign a lease or licence for parks spaces when the occupier changes. The terms of the lease or licence would stay the same as when initially approved by Council.

- Section 20.5 – Assignment of Leases or Licenses (Municipal Land)

This section would provide delegated authority to the Director, Corporate Business and Development to assign municipal leases and licenses for municipal land when the occupier changes. The terms of a lease or licence would stay the same as when initially approved by Council.

- Section 20.6 - Temporary Encroachment Agreements (Municipal Land)

This section proposes to give delegated authority to the Director, Corporate Business and Development to enter into temporary encroachment agreements for private use in municipal land generally. An example of this was when the City granted an Agreement to a film company to use 1 Port Drive for the temporary storage of trailers and set materials.

- Section 20.7 – Special Event Permits

This section proposes to give delegated authority for certain members of the Senior Leadership Team to issue special event permits for temporary uses of municipal lands, road, parks and recreation areas, subject to the permit being no more than 14 days.

The following documents would continue to go to Council for approval:

- Co-management Agreements - These are Agreements whereby the City owns the property and an operator undertakes responsibility for operation and maintenance of the property for its own use, and for the use of the general public, usually in exchange for the waiver by the City of fees payable by the Operator for the use of the Facility. The Operator retains the fees for the account of the Operator. Examples include: Nanaimo Search and Rescue and the Nanaimo & District Track and Field Club.
- Leases – give exclusive possession to an entity to operate their business and are typically longer in tenure. Examples include: Loaves and Fishes at East Wellington Road and the Nanaimo Yacht Club.

Appeals Procedure Bylaw

As outlined in the background section of this report, the procedures for reconsideration must be outlined within a bylaw. By having one comprehensive Appeals Procedure Bylaw, the process will be clearly outlined as to how all reconsideration matters will be dealt with.

Should Council support giving three readings to the new Appeals Procedure Bylaw, staff will bring forward amendments to the bylaws listed on Schedule "A" to the Appeals Procedure Bylaw to the 2022-OCT-03 Council meeting so that the language in each of those bylaws makes reference to the new Appeals Procedure Bylaw. Both the Officer Designation and Delegation of Authority Bylaw and Appeals Procedure Bylaw have been vetted by the City's lawyer.

OPTIONS

Option 1:

Officer Designation and Delegation of Authority Bylaw

That "Officer Designation and Delegation of Authority Bylaw, 2022 No. 7353" (a bylaw to provide for the appointment of Officers and the Delegation of Authority) be given first reading.

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- The advantages to this option:
 - clarity as to when staff have delegated authority to sign certain documents versus when documents should be brought to Council for approval;
 - outdated legislation references would be addressed;
 - additional opportunities to delegate more routine operational matters to staff; and
 - a consistent procedure for reconsideration through a comprehensive Appeals Procedure Bylaw.
- There are no financial implications associated with proposed new bylaws.

Option 2

Should Council wish to make any minor amendments to the proposed new provisions staff propose that Council put forward any recommended changes and then consider giving the bylaws first three readings through the following recommendation:

That Council make the following amendments to the “Officer Designation and Delegation of Authority Bylaw, 2022 No. 7353”: (**insert proposed changes here**);

That “Officer Designation and Delegation of Authority Bylaw, 2022 No. 7353” (a bylaw to provide for the appointment of Officers and the Delegation of Authority) be given first reading.

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Option 3:

Should Council wish to make significant amendments to the proposed provisions, specific direction will be sought and a future report to highlight any implications will be required.

SUMMARY POINTS

- Through Council’s Strategic Plan, staff continue to review bylaws that are outdated, ineffective or inconsistent with Council’s current objectives.
- The Current Officers Appointment and Delegation of Authority Bylaw is 16 years old and references outdated sections of the *Local Government Act*.
- A new Officer Designation and Delegation of Authority of Bylaw would provide clarity to Council, staff, and the public as to which bylaws and documents staff have delegated authority to sign.
- Through a new comprehensive Appeals Procedure Bylaw, consistent procedures have been established for how Council will hear reconsideration matters, including how a person may apply for reconsideration.

ATTACHMENTS:

- Attachment 1 - Officer Designation and Delegation of Authority Bylaw 2022 No. 7353 (new)
- Attachment 2 - Appeals Procedure Bylaw, 2022 No. 7354 (new)
- Attachment 3 - Officers Appointment and Delegation of Authority Bylaw 2006 No. 7031 (existing)

Submitted by:

Karen Robertson, Deputy City Clerk

Concurrence by:

Sheila Gurrie, Director of Legislative Services
Dale Lindsay, Gen. Mgr. Dev. Services/Deputy CAO
Bill Sims, Gen. Mgr. Engineering & Public Works
Richard Harding, Gen. Mgr. Parks, Recreation & Culture
Laura Mercer, Director of Finance
Bill Corsan, Director, Corp. & Business Development
John Van Horne, Director of Human Resources
Tim Doyle, Fire Chief
Jake Rudolph, CAO