

Staff Report to Council

Title: Section 270 Policy Update –
Public Notice Policy

Report Number: CAO General-2024-07

Director: Chief Administrative Officer

Manager: Manager.

Meeting Date:
Wednesday, March 6, 2024

Date to be considered by Council:
Wednesday, March 6, 2024

Recommendation:

That By-law No. 2020-040, being a by-law to establish notice provisions for the Municipality of Kincardine, be repealed, and further

That Council approve and adopt by by-law the draft Public Notice Policy, as presented.

Executive Summary:

Section 270 of the Municipal Act, 2001 (the “Act”) requires that all municipalities adopt and maintain several specific policies which provide a basis for decision-making to support clear and consistent implementation processes. One of the requirements is a policy which outlines the circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times in which notice shall be given. As part of the policy review, staff reviewed the existing notice by-law and have drafted an updated policy for council’s consideration and are recommending it for approval. Alternatively, council could review and affirm that the existing notice by-law is sufficient for its purposes and direct that the by-law be reformatted into the new policy template.

Strategic Priorities:

D.15-Serve, communicate, collaborate and engage with the community to build trust and confidence in municipal services, Council and staff

Financial Considerations:

There are no direct financial implications associated with the report or draft policy. Although, the carrying out of the notice requirements may incur costs that would already be accounted for in the appropriate operating or capital budgets.

Policy:

By-law 2020-040

Context and Background Information:

The drafted Public Notice Policy is an update to the existing policy (which is currently in the form of a by-law) and is in the new policy template.

Reasonable Public Notice

In determining whether notice provided is reasonable, Council may wish to consider whether a reasonable person would think that notice was given in a form and manner and at times required to reach those individuals who might be most likely to be affected by the subject matter. Various factors can be considered, including: the municipality involved, and factors associated with the municipality (rural, urban, upper-tier, lower-tier); the subject matter being dealt with and consequences to a person who might not receive adequate notice; and the complexity of the subject matter and how long it might take a person to respond to the matter.¹

Municipal Act, 2001

At the time that the *Municipal Act, 2001*, came into effect, the new legislation removed several mandatory notice requirements and put the onus on municipalities to develop policies to lay out the circumstances of providing notice to the public. The intent being that municipalities, as a mature level of government, can determine how best to ensure the public is aware of matters being considered by their local councils. With the understanding that local circumstances could mean public notice policies may, and perhaps should, differ from one municipality to another.

An example of a previous public notice requirement in the repealed *Municipal Act* relating to changes with highways:

300.(1)*Before passing a by-law for stopping up, altering, widening, diverting, selling or leasing a highway or for establishing or laying out a highway,*

- (a) notice of the proposed by-law shall be published at least once a week for four successive weeks, and in the case of a village or of a township with a population of less than 40,000, shall be posted up for at least one month in six of the most public places in the immediate neighbourhood of the highway or proposed highway; and*
- (b) the council shall hear any person who claims that the person's land will be prejudicially affected by the by-law and who applies to be heard.*

The removal of the specific legislated public notice requirement related to closing a road should not be assumed to mean that the province no longer saw the need for public notice in various situations, instead the change to the overall framework of the legislation was intended to acknowledge that municipalities could determine how best to provide such notice within their own communities.

In the 20 years since its adoption, the *Municipal Act, 2001*, has also seen amendments which removed certain legislated public notice requirements (e.g. budget adoption, fees and charges), again, not necessarily because public notice is not seen as valuable, but because the province recognizes that municipalities can make decisions in the best interests of their own communities and local circumstances.

For example, currently there is no legislated requirement to provide public notice to change the composition of a local municipal council, but there is a legislated notice and public meeting requirement for an upper-tier municipality to change the composition of its council. It is up to a local municipality to then determine if it is reasonable to provide public notice and hold a public meeting if it were to consider changes to its council composition, and if it is determined to be reasonable, then identify how and when such notice would be provided.

Other Public Notice Requirements

There continue to be a variety of laws and regulations which mandate specific notice requirements for municipalities. Various pieces of legislation (e.g. the *Planning Act*, the *Ontario Heritage Act*) provide detailed notice requirements related to municipal decision-making processes. The draft policy confirms that these legislative provisions apply and will be followed but does not restate such notice requirements.

The drafted policy has retained many of the updates from the 2020 by-law and has been cross referenced with similar policies from comparator municipalities and formatted in the updated policy template.

Key Updates of the Policy:

- The Municipality will continue to use the municipal website as the public outlet source for notices to generate annual budget savings by eliminating advertising costs associated with publishing notices in the newspaper.
- Confirms the opportunity for members of the public to speak to or submit correspondence regarding the matter being considered for some actions (e.g. changing the name of a private road).
- Removal of reference to Committee of the Whole.
- Increased minimum number of days from 10 days to 14 days for public notice with respect to change of name of municipality, change of composition of council, establishment/dissolution of wards.

Alternative Option

As an alternative to the draft policy which is being recommended, Council could affirm that the existing by-law provides sufficient public notice and direct that the current by-law be reformatted as a policy document and maintain all current provisions with the only amendment relating to removal of reference to Committee of the Whole.

Origin:

Staff initiated policy review.

Implementation Considerations:

The draft policy includes more requirements for public notice and more opportunities for public engagement in certain matters coming before council for consideration. This is an increased requirement for staff to ensure that public notice requirements are being met.

Risk Analysis:

The existing notice by-law and draft public notice policy include specific section references in the *Municipal Act, 2001*. If ongoing policy reviews are not undertaken it is possible that the references will become outdated if/when the legislation changes.

Attachments: Draft Public Notice Policy
By-law 2020-040

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ⁱ *Ontario Municipal Law: A User's Manual – 2023*, Sylvain Rouleau, Ophir Bar-Moshe, page 394, 2022 Thomson Reuters Canada Limited.