



Subject: Controlled Access Bylaw – Bylaw No. 16/009

APPROVALS:

David Leflar, Director
Kevin Scoble, Deputy Chief Administrative Officer
Marcel Ulliach, Chief Administrative Officer

Administrative Recommendation:

1. THAT Bylaw No. 16/009, being the Controlled Access Bylaw, be read a second time.
2. THAT Bylaw No. 16/009, be read a third and final time.

Summary:

On May 1, 2016, a state of local emergency (“SOLE”) was declared by Mayor Blake as a result of the wildfire threat that became imminent that day, pursuant to the authority of the Council under the *Emergency Management Act* and in accordance with Council’s delegation of that authority to the Mayor under the *Emergency Management Bylaw*. A Provincial State of Emergency (“PSOE”) was declared on May 4, 2016 which superseded and replaced the SOLE. On May 31, 2016 the Province extended the PSOE to June 30, 2016 and at the same time allowed staged re-entry into the Municipality to begin, subject however to delaying full re-entry to the three areas that suffered the greatest damage: Abasand, Beacon Hill and Waterways. When the PSOE ends the Municipality will require legal authority to continue to control access to these areas in order to preserve health and safety and ensure that a process and system for efficient and effective demolition and clean-up is put in place and maintained.

Background:

On May 1, 2016 the Mayor, acting under powers delegated to her by the Council pursuant to the *Emergency Management Bylaw*, declared a state of local emergency (SOLE). Over the course of the next 2.5 days a series of evacuation orders, first voluntary and then mandatory, and ultimately covering the whole of the Urban Service Area and much of the Rural Service Area, were issued under the SOLE.

On May 4, 2016 the Province declared a Provincial state of emergency (PSOE). Pursuant to the *Emergency Management Act*, the declaration of a PSOE cancels the SOLE and transfers authority under the *Emergency Management Act* to the Minister. Under that authority, the Province maintained the mandatory evacuations originally issued under the SOLE.

On May 31, 2016 the Province extended the PSOE but allowed re-entry to begin to most evacuated areas of the Municipality. The Provincial Chief Medical Officer of Health had the day before issued a recommendation that access to areas that had suffered substantial damage from

the fire should be controlled. These areas include Abasand, Beacon Hill, and Waterways (hereinafter referred to as the “Restricted Zones”).

Discussion:

While the PSOE is in effect the Minister has the authority to control access to all or any portion of the Municipality, which authority can lawfully be delegated and has in fact been delegated to the Managing Director of the Alberta Emergency Management Agency. But when the PSOE expires, all authority under the *Emergency Management Act* will also end. When that occurs a legislative void will arise with respect to controlling access, unless some other lawful authority is in place to fill that void. There are two options to do that if the Province declines to take any further legislative or regulatory steps: (1) The Mayor could declare another SOLE under the *Emergency Management Act*; or (2) the Municipality could pass a bylaw controlling access and re-habitation pursuant to section 7 of the *Municipal Government Act* which gives the Council broad authority to pass bylaws respecting the safety, health and welfare of people and the protection of people and property. Such a bylaw was passed by the Council of Slave Lake in very similar circumstances to what our Municipality will face when the PSOE expires.

The option of the Mayor declaring another SOLE when the PSOE ends could be viable or could be problematic depending upon the situation at that time. Under the *Emergency Management Act*, an emergency is defined as “an event that requires prompt co-ordination or action or special regulation of persons or property to protect safety, health or welfare of people or to limit damage.” A SOLE gives Council the same extraordinary powers as the Minister under the *Emergency Management Act*, and also gives Councillors and the Municipality the same extraordinary protection from liability which (a) may not be appropriate for the situation as it exists on June 30, 2016; and (b) may be vulnerable to legal challenge if conditions are such that extraordinary powers and liability protection are held not to be a “demonstrably justified” restriction of the normal civil rights of residents. Also to be considered is that a SOLE only lasts 7 days and would require repeated weekly renewal by resolution of Council in order to remain in effect for a prolonged period of time.

For these reasons the recommended option is that Council pass a bylaw that would allow the Council to determine how best to control access in order to expedite orderly and efficient demolition and clean-up, and regulate safe re-entry and re-habitation.

The attached Bylaw No. 16/009 would accomplish these goals by ensuring that it remains strictly within the purview of Council to adopt by resolution one or more Controlled Access Plans, addressing specific areas of the Municipality and/or specific aspects of controlled or restricted access. The bylaw provides that Council will determine the content of and adopt the Plan or Plans, and that the Chief Administrative Officer has both the authority and the obligation to implement Council’s directions as set out in a Controlled Access Plan. The bylaw is drafted to come into force when the PSOE ends, which at this time is anticipated to be June 30, 2016 but could be earlier if the Provincial Cabinet so decides. If the PSOE should be lifted prior to June 30, 2016, the Mayor may decide that it is appropriate to declare a SOLE to take the place of the PSOE. It is not clear at the present time whether the PSOE will in fact be terminated prior to June 30 or if a replacement SOLE would then be deemed by the Mayor to be required or desirable having regard to the factors discussed above. Therefore it is recommended to pass the proposed Bylaw No. 16/009 so that there will be a seamless transition to a new source of

authority regardless of when the PSOE ends, for which no further Council legislative action would be required.

Budget/Financial Implications:

There are no additional budgetary or financial implications associated with enacting the bylaw.

Rationale for Recommendation:

Once the PSOE expires or ends, the Municipality will have to regulate access to Restricted Zones in order to maintain public health and safety and ensure that an efficient system of demolition and cleanup is maintained. A bylaw empowering the Municipality to control access, regulate clean-up and establish a system for re-entry and re-habitation is desirable for the safe and efficient rehabilitation of these neighborhoods. Enacting a bylaw does not eliminate the Mayor's option of declaring another SOLE.

Strategic Plan Linkages:

Pillar 1 – Building Responsible Government

Attachment:

1. Bylaw No. 16/009