PUBLIC NOTICE

WHAT'S HAPPENING? Burlington's City Council will be considering an updated Procedural By-law on Tuesday, February 19, 2008 at their 7:00 p.m. meeting.

The Community and Corporate Services Committee will be considering the report leading to this updated by-law on Monday, February 4 at their 4:00 p.m. meeting.

WHERE? Both meetings will be held in the Council Chambers on the second floor of City Hall, 426 Brant Street.

WHAT IS A PROCEDURAL BY-LAW?

The procedural by-law is the City's key document describing:
• the role of the Standing Committees and Council
• the rules about scheduling meetings, distribution of agendas and registering delegations
• the rules of order that apply during meetings (motions, voting, etc.)
• how the city will provide notice to the public.

WHAT IS NEW IN THIS UPDATE TO THE BY-LAW?

• Changes to meet the new Municipal Act, including the role of council, the role of the mayor as the head of council, the matters that may be considered in closed session, and filing a complaint with an appointed investigator
• Public notice, specifically through the city's website and the Update feature in the Burlington Post
• Accountability and transparency definitions
• Information about petitions
• More detail about pecuniary interest, the duties of the City Manager, selection and evaluation of the City Manager, and selection of General Managers
• Minor editorial changes to make the by-law easier to read and understand (for example, using the words "in closed session" rather than "in camera" to describe meetings closed to the public; adding definitions of "confidential", "confidential item" and "meeting"; listing the order of voting).

HOW CAN I GET MORE INFORMATION?
Look at the meeting agendas posted on the website www.burlington.ca under Welcome to City Hall, City Meetings Calendar, and see the report about the by-law in the agenda for the February 4 Special Community and Corporate Services Committee meeting.

The existing by-law can also be found on the city’s website www.burlington.ca under on line documents, city by-laws. Type in by-law number 52-2007 and then by-law 117-2002.

HOW CAN I COMMENT ON THE PROPOSED BY-LAW?

Contact the City Clerk by e-mail to phillipsk@burlington.ca or by phone 905-335-7702.

Register as a delegation to the Committee or Council meeting (on line at www.burlington.ca or by phone to the Clerks Department). Delegations must register by 12 noon on the day of the meeting.
DELEGATION COUNCIL PROCEDURAL BY-LAW NOVEMBER 28, 2016

PLEASE EXCUSE CAPITALS

IN PREPARING OUR DELEGATION FOR CC&S IT HAS BECOME CLEAR THAT FOR THE FIRST TIME IN OUR 30 YEARS OF DELEGATING AT COUNCIL AND ITS COMMITTEES WE REQUIRE MORE TIME FOR OUR DELEGATION THAN THE FIVE MINUTES SET OUT IN THE PROCEDURAL BY-LAW.

WE ARE REQUESTING COUNCIL WAIVE THE PROCEDURAL BY-LAW AND EXTEND THE 5 MINUTES TO A MAXIMUM OF 15 MINUTES. THIS IS THE TOTAL TIME THAT WOULD HAVE BEEN MADE AVAILABLE TO US AT CC&S AND COUNCIL (NEW INFORMATION ONLY AFTER LISTENING TO THE CC&S DEBATE). WE NEED THIS TIME TONIGHT DUE TO THE VERY SIGNIFICANT ISSUES WE HAVE WITH THE PROCESS FOR APPROVAL OF THIS AMENDED BY-LAW AND THE AMENDED BY-LAW ITSELF.

IF WE HAD BEEN AWARE THAT CC&S WERE TO CONSIDER AN AMENDED PROCEDURAL BY-LAW ON NOVEMBER 7, 2016, WITHOUT ENGAGING IN ANY ADVERTISED PUBLIC DISCUSSION OF THE MULTIPLE CHANGES FROM PROCEDURAL BY-LAW 37-2014, CLASSED AS HOUSEKEEPING CHANGES THAT ARE MINOR IN NATURE AS OPPOSED TO LISTED MAJOR CHANGES, WE WOULD HAVE DELEGATED AT CC&S WITH THE PRIME OBJECTIVE OF REQUESTING THAT THERE BE A WELL PUBLICIZED PUBLIC MEETING PRIOR TO SUBMISSION TO CC&S. OUR REASON BEING WE HAVE GREAT DIFFICULTY IN SUPPORTING SEVERAL OF THE AMENDMENTS AS THEY STAND, PARTICULARLY WITHOUT FIRST PROVIDING AN OPPORTUNITY FOR THE CITIZENS OF BURLINGTON TO DISCUSS THE CHANGES AT A PUBLIC MEETING.

WE WOULD APPRECIATE YOU FORWARDING THIS REQUEST TO THE HEAD OF COUNCIL, THE CHAIR AND VICE-CHAIR OF CC&S, THE APPROPRIATE CLERK.
WHO WILL BE IN ATTENDANCE THIS EVENING AND ANY OTHER PERSON YOU BELIEVE SHOULD BE RECEIVING SUCH A REQUEST.
TRYING TO GET WHAT WE NEED TO SAY INTO FIVE MINUTES THIS EVENING IS AN ABSOLUTELY IMPOSSIBLE TASK EVEN FOR SOMEONE AS EXPERIENCED AS ANNE IS IN PREPARING SUMMARY DOCUMENTS FOR BOARD AND COMMITTEE REVIEW AT CITY HALL AND A MAJOR CORPORATION.
THANK YOU TO ALL THE CLERKS ASSISTANCE TODAY AND FRIDAY. WITHOUT THIS ASSISTANCE A MEANINGFUL DELEGATION THIS EVENING EVEN WITH 15 MINUTES WOULD HAVE BEEN IMPOSSIBLE.
REGARDS, ANNE AND DAVE MARSDEN, REGISTERED DELEGATES AT THIS EVENING’S COUNCIL MEETING.
SUBJECT: Audit of City of Burlington Procedure By-law Amendment Process

REPORT NO. MARSDENTOCITY1-16

DATE: December 9, 2016

FROM: Anne and Dave Marsden
Community Health, Safety and Access Advocates

Date to Council: December 19, 2016

RECOMMENDATIONS:

1. Council direct staff to immediately post the index with all on-line copies of by-laws including the Procedure By-law.

2. Councillors Meed Ward and Taylor, propose and second a Notice of Motion to Reconsider Council Approval of the amended Procedure By-law approved by a majority vote of Council on November 28, 2016.

Councillors Meed Ward and Taylor are the Chair and past Chair of Community and Corporate Services Committee which first addressed Report No. CL-21-16 (Procedure By-law Update) and recommended approval of an amended procedure by-law 64-2016 at a Regular Meeting of Council on November 28, 2016

3. If the Motion to Reconsider is successful, Council direct the City Manager to schedule a timetable to bring back an amended procedure by-law to the Community and Corporate Services Committee, or in the alternative, refer the amended procedure by-law back to a Community and Corporate Services Committee (or its replacement)

PURPOSE:

To bring to the attention of Council the need to reconsider the majority approval at Council of the amended procedure by-law 64-2016 and repeal of 37-2014 given there are changes to 64-2016 that have not been considered by Committee or Council that sets aside Municipal Act requirements and the commitment of Council for a decision making process that engages the public, is transparent and in the best interests of the City residents and businesses.
BACKGROUND AND DISCUSSION:

The City procedure by-law is required under Section 238 of the current Municipal Act. It governs the proceedings of Council and its Committees and sets out the roles for staff and the elected Council members. The current by-law 37-2014 includes the rules of order, rules governing the conduct of both Council members and the public and accountability, transparency and notice requirements.

It is a document that Councillors and members of the public who wish to engage with Council and Committee in the City decision making process need to thoroughly understand and adhere to the procedures contained therein, without exception.

The current on-line version of the procedure by-law 37-2014 does not include the required index which makes it very difficult for staff, councillors and the public to work with contrary to the Municipal Act requirement for an efficient and effective decision-making process that is in the best interests of the City, its residents and businesses. The authors have obtained a printed, bound and indexed copy of the procedure by-law in order to conduct a community audit of the amendment process which they believe is an unnecessary expense to the city given 37-2014 is posted on-line.

It has been the experience of the authors of this report that exceptions to the procedure by-law have been part of the City decision making process for at least the last four years which affects the credibility of the process. (See paragraphs 5.2, 6.1, 9.1 – 9.4 for three examples of such exceptions). The authors of this report have always brought these exceptions to the notice of council, committee or staff and the media through correspondence and delegations and in some cases the media has brought the attention of the public to these exceptions.

This report has been prepared after a review of approximately 50 hrs. in length of the amended by-law process that saw 17 major changes to the current Procedure By-Law 37-2014 and numerous (number not documented) housekeeping changes.

The audit, the most difficult amended by-law review undertaken by the authors due to a different format and index being part of the proposed amended by-law 64-2016 to the current one 37-2014, was limited in time as we had a deadline for receipt of this report by the Clerk by December 9, 2016 if the report was to be included in the Council agenda for consideration by Council when voting to enact the by-law. Anne Marsden has approximately 17 years professional experience working with by-laws, including drafting new ones for Board approval and providing comparison documents to allow Board members to understand what the changes from the current by-law were that they were being asked to approve in an amended by-law. Prior to going to the Board all draft new by-laws and draft amended by-laws were reviewed by committees and senior administrative staff.
The audit identified the amended procedure by-law comprised 20 pages less than the current one, 37-2014 and identified numerous changes that had not been identified for committee, council, the public or media. Due to our time limitations, the authors have included some, not all, of the identified procedure by-law changes which report CL-21-16 classes as simply housekeeping changes.

Amendments identified by this audit above those identified in CL-21-16 are as follows:

1. Conduct of Members of Council — Section 37.3 of the approved procedure by-law includes a new provision that the Chair will request the Clerk contact security that does not appear in 27.3 of 37-2014.

2. Conduct of the Public — Section 35.4 of the approved procedure by-law includes Any person who contravenes any provision of this section may be expelled from the meeting by the chair which does not appear in Section 30 of 37-2014.

3. The definition of improper conduct set out in Section 1.20 of 37-2014 has been removed, along with 6 other definitions, including Accountability and Transparency from the amended procedure by-law.

4. Definition 1.15 in 37-2014 has been amended in Appendix A to CL-21-16 to include. Council also refers to committees when no alternate rules are stated which the authors found confusing.

5. The right for members of the public to delegate at Committee on items that were not on the agenda was clearly set out in 21.2 (second part of the paragraph) of current Procedure By-law 37-2014 and Engaging with City Council and Committee approved by the current members of council and Mayor.

5.1 This right, as set out in paragraph 11.3 above, has been removed under paragraph 37.4 (page 19) of the amended procedure by-law and instead one can only delegate on an item not on the Committee Agenda at the discretion of the Clerk in consultation with the Committee Chair which leaves it wide open for the Clerk and Chair to stop delegations when they do not wish a matter to be raised at a public Committee or Council Meeting.

5.2 The CC&S webcast of January 12, 2015 sees the chair mistakenly advising committee that he had seen a delegation request to speak to an item not on the agenda. The delegation was refused the opportunity to delegate on the budget review report F1-01-15, the only item on the January 12, 2015 agenda. Both the title and number of the only agenda item for the January 12, 2015 meeting were clearly included in the request to delegate at the January 12, 2015 which met all the requirements that the procedure by-law 37-3014 set out to delegate at this meeting. The delegation received two confirmations of the receipt of the request and attended in Council chambers expecting to delegate. The evidence from the webcast supports that a
Committee or Council Chair in consultation with the Clerk can and will deny delegations an opportunity to delegate on one of the most important items before Committee and Council regardless of the matter being on the agenda. The Chair subsequently admitted his statement made on the public record was incorrect but never corrected the public record. This change clearly affects the rights of the public to delegate at Committee and Council as previously set out in the Procedure By-law 37-2014.

6. Section 10.2.1 of Schedule C of the current Procedure By-law, 37-2014, page 42, makes it clear that a motion to reconsider a matter voted on at Council can only be introduced at a Regular Meeting of Council. Section 41.3 of the amended by-law, 64-2016, (CC&S CL-21-2016) approved by Council on November 28, 2016 does not specifically state a motion for reconsideration has to be introduced at Regular Council which is an unannounced major departure from previous procedure by-laws.

6.1 Council are on the webcast record of the September 29, 2014 D&I Committee meeting that they had no regard for this particular section of the Procedure By-law when a Motion to Reconsider a majority Regular Council Meeting vote of non-support for a Resolution (regarding Nuclear Dumping) was introduced to the September 29, 2014 D&I Committee and the decision of D&I to reconsider was approved at a Special Meeting of Council (webcast at the end of the September 29, 2014 D&I webcast*) without any notice to the public.

7. Section 10.2.2 of Schedule C under the current Procedure By-Law 37-2-14 Actions of the Council that cannot be reversed or suspended cannot be reconsidered does not appear to be included in the approved amended Procedure By-law under Section 41 pertaining to Reconsideration. We believe it is highly unlikely that it has been incorporated in another Section and, therefore, it appears that actions of the Council that cannot be reversed or suspended can be considered with the enactment of the amended by-law.

8. Section 38, Duties of the City Solicitor and Section 39, Duties of the City Manager of the current procedure by-law 37-2014 are not included in the amended, approved by-law 64-2016 and this has not been publicized as a major change or an explanation for such given in Report CL-10-16

8.1 Section 38, Duties of the City Solicitor as set out in the current Procedure By-law assures the public that reports before Committee and motions before Council are reviewed by the City Solicitor to ensure any matter contained therein is not beyond the power of a Committee or Council or is otherwise illegal.

9. Section 20.5 (page 21) of current Procedure By-law, 37-2014, provides a definition of petition as used in Section 21.1 entitled Special Meetings. Our review shows that Section 20 seems to have been removed in its entirety and is not included in by-law 64-2016 and there is no definition of “petition” that appears under the definitions of the amended procedure by-law.
9.1 This is of particular concern to the authors and other members of the public as both an Amberley Gavel investigator and members of the public have identified through the Clerk that the Municipal Act requirement of a “petition”, (set out in the current and amended by-laws) does not exist for a Special Meeting investigated by Amberley Gavel and 33 Special Meetings held in 2013 and 2014.

9.2 The items on Special Meetings In the current Procedure By-law 11.1 (page 15) and the amended by-law (Section 21.1) gives the power to call a Special Meeting to both the Head of Council (Mayor) and the City Manager. The Municipal Act Section 240, only sets out the authority to call a Special Meeting lies only with the Head of Council (Mayor).

9.3 Municipal Act, Section 240, Calling of Meetings:
   (a) the head of council may at any time call a meeting and
   (b) upon receipt of a petition of the majority of the members of council, the clerk shall call a special meeting for the purpose and at the time mentioned in the petition.

9.4 The current Procedure By-law (37-2014) 11.1 (page 15) and the amended by-law state the clerk may call a Special Meeting upon receipt of either a petition or upon a council resolution. The Municipal Act, Section 240 set out in paragraph 9.3 specifically only allows the clerk to set the meeting after receipt of a petition of the majority of members of council. It appears that the old By-law and the amended by-law are not compliant with Section 240:
   (1) with regard to the City Manager having the power to call a Special Meeting and
   (2) for the clerk having the power to schedule a special meeting upon a resolution of council.

10. Section 25.3 of the current Procedure By-law 37-2014 clearly states the by-laws considered shall be open to amendment and debate. The amended by-law does not contain this provision under the By-laws Section 32.

Respectfully submitted to the Council of December 19, 2016
for consideration during Council discussion of the enactment of Procedure By-law 64-2016 by Community Health, Safety and Access Advocates Anne and David Marsden on December 9, 2016.

Anne Marsden (Mrs.)

David W. Marsden (Mr.)

*Several requests of staff to have this webcast be a stand alone webcast rather than at the end of the D&I Committee have been refused.

(Words 2,100)