



SUBJECT: Legislative framework during COVID-19

TO: Mayor and Members of Council

FROM: Clerks Department

Report Number: CL-09-20

Wards Affected: All

File Numbers: 150

Date to Committee: N/A

Date to Council: April 20, 2020

Recommendation:

Approve By-law 21-2020 to amend By-law 04-2020, as amended, the City of Burlington Procedure By-law to allow for virtual delegations at electronic meetings, and to establish Committee of the Whole, as outlined in Appendix A to clerks department report CL-09-20.

PURPOSE:

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture
- Deliver customer centric services with a focus on efficiency and technology transformation

Executive Summary:

This report is in response to how City Council and committee meetings will be conducted during the COVID-19 emergency. The report will include the following topics:

- agenda management during COVID-19
- how the committees of Council may be affected
- return of Committee of the Whole
- public delegations, and public participation at Council and committee meetings

Background and Discussion:

In response to the COVID-19 virus, the City Burlington has closed all city facilities including city hall to public access. In addition, it has shifted much of its workforce to work remotely. As the city continues to operate, approvals must occur to ensure that city business resumes. The following is a chronology on City of Burlington Council meetings during the initial weeks after city hall was closed.

March 16, 2020 - All city facilities, including city hall, were closed to the public. It was determined that all meetings during a three-week period would be cancelled including the regularly scheduled March City Council meeting.

March 17, 2020 - The Premier declared an emergency under the *Emergency Management and Civil Protection Act*.

March 18, 2020 – The City of Burlington closed its buildings, including City Hall, with most staff shifted to work from home. A small portion of staff were permitted to work at City facilities, based on a list of exceptions.

March 19, 2020 - Ontario legislature passed Bill 187, the *Municipal Emergency Act, 2020*, to enable municipalities, during a declared emergency, the ability to allow for virtual participation, and to conduct council meetings electronically with members who participate remotely being counted for the purpose of quorum.

March 21, 2020 - Mayor Meed Ward declared an emergency in the City of Burlington under section 4 of the *Emergency Management and Civil Protection Act*.

March 24, 2020 - Special Council meeting held to enact necessary Procedure By-law amendments to allow remote participation. A meeting guide was posted to the city's website which provides additional information on how virtual meetings will occur.

April 6, 2020 - First standing committee meeting with remote participation and first time in closed session. Items for April standing committees were streamlined to ensure only essential or time sensitive items were brought forward. After the review, it was determined there was only enough items for one standing committee meeting for the month of April.

April 6, 2020 Special Council meeting to enact an Interim Property Tax Relief By-law in response to COVID-19, and a Physical Distancing By-law.

Since March there has been a substantive effort spent on reacting to the day to day challenges with respect to COVID-19 and being responsive to directions from higher orders of government. A corporate focus was placed on shifting its existing complement into a remote workforce including logistics and building the necessary policies. During this time, management staff were tasked to develop a three- month plan that would

engage their remote teams to maintain necessary operational services and indicate what other value-added work could be completed.

The initial phase of the emergency response has occurred. On March 31st the City of Burlington advised that the municipal closures would extend until June 30, 2020. With the extension of the closure, the three-month corporate plan, coupled with the ability to convene Council and committees of Council virtually, the City is entering a new remote way of conducting business for the short term.

Legislative Framework

On March 24, 2020 the city enacted By-law 13-2020 to allow for remote participation by members of Council at Council meetings during a declared emergency. These amendments also extend to any committee of Council, which would include all the standing committees, advisory committees and quasi-judicial committees with delegated authority from Council. The amendments afford for the following actions:

- ability to conduct a regular, special meeting of Council or a meeting of a committee of Council, electronically with remote participation during an Emergency.
- authority for a member to participate remotely, be counted towards quorum and to participate in voting.
- ability to convene into closed session with remote participation.
- confirmation that electronic meetings will have the same notice provisions as outlined for in-person meetings and the public will have access to the open portions of the meeting.

In addition, a meeting guide was created to provide for additional context as to how these meetings would take place. As Council and staff gain more experience in a virtual environment, and with the technology, the guide will be updated accordingly.

Agenda Management for Standing Committees

During the initial response period, mid-March to April 20, 2020 a rubric was used to determine what items would be presented to committee. It was determined that only time sensitive or necessary items should be brought forward during this period, because the City Hall was closed, and to prioritize physical distancing at the time. Items destined for April were pared down, and it was determined that only one committee meeting would be required. The following items were rescheduled from the April slate of standing committee meetings and the Burlington Leadership Team was polled to determine when these items would be presented to standing committee:

Environment Infrastructure and Community Services Committee

- Elgin Promenade Phase 4 Design – Rescheduled to May 11, 2020

- Blue Water Park Dedication – Rescheduled to June 8, 2020
- Concessions and Vending Services – Rescheduled to the Fall

Community Planning Regulation and Mobility Committee

- Temporary Use By-law to Permit Entertainment Recreational uses on Patios throughout the City – Rescheduled to Fall 2020.
- Red tape Red Carpet (RTRC) Implementation Update Q1 2020 – Rescheduled to May 12, 2020
- Amendment to Noise By-law 19-2003 – Rescheduled to May 12, 2020
- Bill 108 Timelines (Planning) – Rescheduled to June 9, 2020
- Shadow and Wind Studies – Rescheduled to June 9, 2020
- Automated Speed Enforcement Update – Rescheduled to June 9, 2020
- Development Review - Pre-Application Neighbourhood Meeting Protocol - Rescheduled to June 9, 2020
- Taking a Closer Look at the Downtown Recommended Modifications to the adopted Official Plan - Rescheduled to Fall 2020
- Neighbourhood Centres – Rescheduled to Fall 2020

Corporate Services, Strategy Risk and Accountability Committee

- Voting Options for 2020 and Ranked ballots – Rescheduled to June 11, 2020
- Property Tax Software – Rescheduled to May 14, 2020
- Award of Contract – Job Evaluation – Rescheduled to Fall 2020

Audit Committee

- Financial Highlights for period ended December 31, 2019 – Rescheduled to June 10, 2020
- 2019 Compliance with Mandatory Training – Rescheduled to June 10, 2020
- External audit contract – Rescheduled to June 10, 2020 – Due to COVID-19 external auditors were not able to be on-site to conduct audit.
- City Auditor final interviews – Rescheduled to June 10, 2020

During the next few months, the Clerks Department will work with the Burlington Leadership Team to produce a report to Council, featuring a projection of the next month's intended reports to the standing committees. In reporting, it is aimed to provide Council and the public with additional notice on what items may be coming. The report will also indicate what items were rescheduled, and to which meeting date they are

intended to be presented. For the month of May, a listing of the upcoming reports is attached as Appendix B. The following reports were rescheduled from the May schedule:

Environment, Infrastructure and Community Services Committee - May 11, 2020

- Ontario Recreation Facilities Association Audit – Rescheduled to the Fall
- Fireworks By-law Review – Rescheduled to the Fall
- Stormwater Management (SWM) Criteria and Standards – Rescheduled to June 8, 2020 meeting
- Blue Water Park Dedication – Rescheduled to June 8, 2020 meeting
- Update on construction – low residential – Rescheduled to June 8, 2020 meeting

Community Planning, Regulation and Mobility Committee- May 12, 2020

- City of Burlington Cycling Plan - Rescheduled to September 15, 2020
- Bike Share – Rescheduled to September 15, 2020

For Council's information the following reports of interest are in progress and will be scheduled when they are complete. At this time, no dates are associated with these reports.

- Service Review Recommendations Update
- Corporate Project Governance and Status Update

As there is a current public health crisis, and with most staff working remotely, some reports may be delayed or deemed not a priority. Working through COVID-19 has demonstrated that this is an evolving situation, which will require flexibility and agility to work through time sensitive issues that arise. If there are changes to projected reports, staff will provide an update in the monthly report projection to Council. If there are COVID-19 specific reasons or rationale this will be included.

Council Workshops

Council Workshops are meetings which include all members of Council. They are used when time is required for training, discussions with other levels of government, and outside agencies, workshops on complex matters or strategic planning. These meetings feature a freer flow of dialogue with members of Council with the speaking limits associated with formal meetings not applied. At this time these meetings are under review, as the meetings may include breakout sessions, which will require additional logistics and technical support.

Committee of the Whole

It is recommended that the Committee of the Whole be added to the Committee system to allow for flexibility in agenda management planning and to create a body that may deal with items that do not fit under any of the current standing committee mandates. Amendments to the Procedure By-law have been included (Appendix A) which sets forth the following:

- Committee of the Whole may convene to consider policy issues not included in the mandate of a Standing Committee, or any other matter as determined by the City Clerk in consultation with the Mayor and the City Manager.
- A Committee of the Whole meeting may be called if there is a lack of agenda items to convene the regularly scheduled standing committee meetings, as determined by the City Clerk in consultation with the Mayor and the City Manager
- Committee of the Whole meetings shall be chaired by the Deputy Mayor at the time of the meeting. If the Deputy Mayor is not available, the meeting will be chaired by the previous Deputy Mayor.

Technology Used to Assist in Virtual Meetings

To administer the virtual/remote Council meetings, Burlington has been using a program called Zoom. Zoom is also used by Halton Region to conduct remote/virtual meetings. Using the same system as the Region will assist members of Council to navigate technology during meetings. Zoom is relatively new technology, and as staff gain experience, they will incrementally enhance the set-up to increase capability of the meetings. Therefore, the procedures or the way virtual meetings occur may change or evolve over the next few months. These meetings will settle into a groove, with increased technological experience and in finding the rhythm of meetings conducted in a virtual space.

All members participating remotely are participating by phone. In Council Chambers, the Chair/Mayor manages the meeting, with the assistance of Clerks Department staff and Information Technology Services (ITS) staff practicing physical distancing. All participants will be connecting by way of Zoom. Zoom is used as the backend to bridge the calls into an audio feed. The audio feed is then patched into the Council Chambers audio visual system.

The Clerks Department has been working with ITS and our Information Security Manager to understand risks and to carefully assess how the City of Burlington makes use of the technology. One risk is that with the new technology is that there is no support. If there is a larger technical issue (beyond user error) this may force the meeting to recess to allow ITS to troubleshoot the technology. If the matter cannot be

resolved in a reasonable time the meeting may be recessed and rescheduled to be completed at a later date.

Delegations from the Public

On March 24, 2020, the Procedure By-law amendments did not afford for delegations. At the time, staff were unsure about the length of the closure, and whether the technology was robust enough to support public delegates. Since the passing of the amendments it has been determined that all City buildings including City Hall would be closed to the public until the end of June; staff have also determined a way forward to allow for public access to use the system to delegate to committee and Council.

It is recommended that the Procedure By-law be amended to allow for remote delegations (Appendix A). In addition, the Electronic Meeting during a Declared Emergency Remote Participation Guide will be amended to have a revised Public Participation section. Should Council approve the Procedure By-law amendments, delegations could start during the May 2020 standing committees meetings. The following will be incorporated into the Remote Participation Guide:

5. Public Participation

- 5.1 All requests to delegate to an Electronic Meeting under this section shall be made by way of electronic submission, submitted to the Clerks Department at clerks@burlington.ca by noon the day before the Electronic Meeting. If the Electronic Meeting is on a Monday, requests to delegate shall be submitted by noon on the Friday before the meeting. Submissions shall be provided to members in advance of the meeting.
- 5.2 Public attendance to Electronic Meetings during the course of an Emergency may be restricted to electronic means and will be indicated on the meeting agenda.
- 5.3 All requests to delegate must contain a copy of the delegate's intended remarks which will be circulated to all members of Council in advance as a back-up to technology. All rules in the Procedure By-law with respect to delegations (Section 40 Delegations) shall apply to remote delegations.
- 5.4 Confirmed delegates will be provided with all applicable access codes and instructions to enter the teleconference or video conference system.
- 5.5 On the day of the meeting, all registered delegates should log into the system 30 minutes in advance of the meeting start time to check-in with appropriate staff and to ensure that their audio settings are appropriate for the meeting webcast.
- 5.6 When waiting to be called upon by the Mayor/Chair, all delegates will have their audio on mute.
- 5.7 The Chair or the Clerk may indicate when the delegate has one-minute left to complete their delegation.

To ensure that the technology is used properly, the Clerks Department will work with ITS to create appropriate technical instruction. There will be a learning curve with adopting a new way to allow for and to receive delegations. Residents will be able to connect by either phone or computer. There may be issues with residents being unable to connect, not having the appropriate technology or poor connectivity. Staff will attempt to assist, but as they are requested to provide their speaking notes in advance, these will be circulated to committee or Council. Staff will review the first month of delegations and may adjust the procedures or the instruction materials based on experience or feedback. Allowing delegations will require more ITS and Clerks Department staff involved in meeting management during the meeting. Public participation is important, engaging more staff to ensure the public has access to delegate will help mitigate the existing disruption in service.

Statutory Public Meetings

Statutory public meetings allow for individuals to speak at a planning public meeting without pre-registering as a delegate, although some individuals do pre-register so they are able to speak at the beginning of the meeting. At the end of the pre-registered delegates, the Chair opens the floor for any other individuals that may wish to come forward and address the committee.

The current in-person process is in spirit with the *Planning Act R.S.O. 1990*, (Planning Act) by way of sections 17(19.4), and 34(14.2) which supports that every person who attends a public meeting, required under the Planning Act shall be given an opportunity to make representations in respect of the proposed by-law. In addition to making an oral submission, residents could elect to submit a written submission which would allow the individual the ability to have their views on the proposed matter known. All correspondence on a matter before committee or Council is circulated to all members and forms part of the public record.

Due to COVID-19, since mid-March, City Hall has been closed to the public, and Council has been conducting its business by way of technology, to convene meetings and conduct city business in a virtual environment. On April 15, 2020 the Province, by way of Ontario Reg 149/20 provided clarity that regardless of the COVID-19, legislated planning timelines are still in effect.

Staff are recommending that in consultation with Legal Services and Community Planning, some matters in abeyance could be brought forward during this time to ensure that items are dealt with in a timely manner, and that when the City returns to in-person meetings there is not a backlog of items that must be scheduled. In addition, a return to in-person meetings may be gradual, wherein public access to Council Chambers may be limited or have restrictions.

More time is required to fully walk through the process to assess, and ensure that an equitable approach, balancing public participation with the constraints of technology and resources is brought forward. Staff will use learnings from the delegation opportunities provided in the month of May, to help inform how statutory planning public meetings could be structured in a virtual environment.

Committee of Adjustment, Court of Revision, Property Standards

The Committee of Adjustment is an independent body appointed by Council under authority by way of the Planning Act to consider matters in connection to the zoning by-law; minor variances, variation on existing legal non-conforming uses, and conformity for a particular use. It also deals with land division matters. The Committee also serves as the city's Property Standards Committee, in accordance with the *Building Code Act*, and the Committee of Revision, in accordance with the *Municipal Act 2001*, Ontario Reg 586/06. The Committee of Adjustment's terms of reference indicates that the Committee will meet twice a month, if required.

There are several items that are ready and could be dealt with by the Committee. At this time these items have been postponed until further notice. In consultation with the Secretary Treasurer - Committee of Adjustment, some of the items may generate public interest and potential delegations. As this is a quasi-judicial committee made up of entirely resident members and may involve many other parties, it is determined that the function of this Committee in a virtual environment is still under review at this time.

Advisory Committee Meetings

All advisory committee meetings supported legislatively by the Clerks Department have been cancelled up to June 30, 2020. In the cancellation notice staff indicated that if there were time sensitive or urgent matters, a special meeting could be convened electronically with remote participation. The Clerks Department supports two statutory advisory committees, Burlington Accessibility Advisory Committee and Heritage Burlington. In preparation of this report, the appropriate committee liaison staff were consulted.

Burlington Accessibility Advisory Committee (BAAC)

With respect to the Burlington Accessibility Advisory Committee (BAAC) and the legislative requirements under the *Accessibility for Ontarians with Disabilities Act* (AODA) and its regulations, there is no minimum requirement to the amount of times the committee must convene per year.

In consultation with the Accessibility Coordinator, BAAC does have specific areas that are required through the AODA, and its regulations. Through the Integrate Accessibility Standards Regulation, Design of Public Spaces Standards the BAAC must be consulted on specific items. Much of this work was completed in 2019, and its review does not

need to occur in 2020. The Clerks Department will work with the Accessibility Coordinator to ensure that if there are any required consultations to be completed on capital projects or any other items as listed in the BAAC terms of reference, the appropriate arrangements will be made.

In preparation of the report, the Accessibility Coordinator has been apprised of the restrictions with respect to in-person meetings, and the option to convene virtually. They have informed the Clerks Department of items that may be of interest to BAAC that may arise during the next three to six months.

Heritage Burlington

In consultation with the City's Heritage Planner, there are no requirements in the *Ontario Heritage Act* which requires Heritage Burlington to convene a minimum amount of times per year. Heritage Burlington's duties stem from section 28 of the *Ontario Heritage Act*, which provides a listing of heritage matters that the Committee must advise and assist with, which includes designations, alterations, demolitions of heritage buildings. Based on advice from Legal Services, provincial timelines have been suspended due to COVID-19. Currently, staff continue to process active applications.

Staff have indicated that there are items that may require direction from the committee. The Clerks Department will work with the Community Planning Department to determine the best path forward. If a virtual meeting is necessary, it will be required to be available to allow the public to follow along and have the ability to delegate to Heritage Burlington.

Communications

The Clerks Department will work with Communications to ensure that the public is informed on any changes with respect to the provision of services. It is recommended that any items communicated, are included into COVID-19 updates. The Clerks Department will also ensure that its web presence is kept up to date, and that any instruction is reviewed to ensure it is communicated in plain and accessible language. Should Council approve the recommendation to allow public delegations, messaging about the ability to connect by way of new technology will begin in advance of the May standing committee meetings.

Strategy/process

With the current situation presented by COVID-19 and the public health recommendations to physically distance, holding in-person committee and Council meetings have become a challenge. With the recent amendments made by the Province of Ontario with the *Municipal Emergency Act 2020*, remote participation at Council and committees of Council has created an opportunity to allow for the legislative business of Council and its committees to continue. Staff are currently leveraging

technology to ensure that members of Council and the public can participate in meetings of Council and its various committees.

Options Considered

Staff considered leaving the current system as is and not to allow for public delegations. However, based on the need to include public participation at committees and Council, the decision was made to initiate the process to best serve the public. An evaluation will occur after the May standing committee meetings, with the necessary adjustments being made to ensure service excellence.

Financial Matters:

The cost of a Zoom license to support virtual meetings for Committee and Council will be funded from the ITS operational budget.

Total Financial Impact

Nominal

Source of Funding

ITS Operational Budget.

Other Resource Impacts

Not Applicable

Climate Implications

As the City of Burlington will be conducting virtual meetings, there will be less travel for residents, staff, and members of Council. Lowered travel rates will help to reduce the carbon footprint associated with in-person public meetings.

Engagement Matters:

No outside groups were consulted.

Conclusion:

In passing the amendments to the Procedure By-law, Council will enable public delegations at Council and its committees. This will allow for more well-rounded discussions about items with community participation.

Respectfully submitted,

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City Clerk

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Appendices:

- A. Proposed Amendments to the Procedure By-law
- B. Report Projection – May 2020

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.