



SUBJECT: August meeting cycle and public participation at statutory public meetings

TO: Mayor and Members of Council

FROM: Clerks Department

Report Number: CL-10-20

Wards Affected: All

File Numbers: 150

Date to Committee: NA

Date to Council: May 25, 2020

Recommendation:

Approve the addition of an August 2020 meeting cycle, as described in clerks department report CL-10-20.

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

Background and Discussion:

In response to the COVID-19 virus, the City of Burlington has closed all city facilities including city hall to public access. In addition, the city has shifted much of its workforce to work remotely. As the city continues to operate, meetings must occur to ensure that the necessary approvals are obtained. The following is a chronology of Procedure By-law amendments, 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 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 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 20, 2020 - Procedure by-law amendments to enable to virtual delegations and to re-establish Committee of the Whole to allow for the city to be nimble when agenda planning.

May 25, 2020 - Proposed way path forward to allow for statutory public meetings in accordance with the *Planning Act R.S.O. 1990*, (the Planning Act) and the addition of an August cycle of committee meetings.

With the initial phase of the emergency having occurred. The City of Burlington has created virtual meeting procedures to ensure that business can continue. On March 31st the City of Burlington announced that municipal closures would extend until June 30, 2020.

It is not certain that after June 30, 2020 Council would resume its customary way of doing business. Resumption of services will be contingent on Provincial and established municipal timelines for a staged re-opening and must adhere to public health guidelines. In the creation of a robust yet scalable remote participation system, which can then be modified, will support the continuation of Council business for the foreseeable future.

Addition to the Council schedule

Staff are recommending adding an extra cycle of meetings in August to help facilitate with any backlog or any items that may be required for approval. The proposed August dates have taken into consideration the conference for the Association of Municipalities of Ontario (AMO) which may shift and provide some of their events virtually.

In addition, for the foreseeable future there will be a special Council meeting scheduled to deal with COVID-19 related items. The special Council meeting will be scheduled after Corporate Services, Strategy, Risk & Accountability Committee, and allow for quick approvals to service resumption or time sensitive COVID-19 matters.

August 2020 – Proposed Meeting Schedule

Environment, Infrastructure & Community Services Committee

Monday, August 10, 2020

Community Planning, Regulation & Mobility Committee

Tuesday August 11, 2020

Corporate Services, Strategy, Risk & Accountability Committee

Thursday, August 13, 2020

Special Burlington City Council - time sensitive COVID-19 ratifications

Thursday, August 13, 2020

Burlington City Council

Monday, August 24, 2020

Legislation Changes March 20 and April 15, 2020

On March 20, 2020 the Province passed Ontario Reg 73/20, which suspended procedural timelines in connection to any statute in effect in Ontario. On April 15, 2020 the Province, by way of Ontario Reg 149/20, Bill 189, the *Coronavirus (COVID-19) Support and Protection Act, 2020* provided some clarification. In clerks department report CL-09-20, it stated that the new regulation indicated that legislated timelines are still in effect. This interpretation was not correct. The regulation did clarify that planning matters were not applicable to the suspension of timelines in Ontario Reg 73/20, however it went further to provide a framework. Most of the regulation assists with providing clarity on notice, however the following two bullets provide clarification on what occurs if the municipality chooses to pause or process applications.

- If a decision on an application in process was not made before April 15, 2020, then it is not required to be rendered throughout the duration of the state of emergency. Processing timelines required by the Planning Act, and rendering a decision are suspended until the emergency is over, and only after the timeline would resume. Further, no appeals from non-decisions until after the emergency has been lifted.
- Should Council proceed to render a decision during the state of emergency, the customary Planning Act notice requirements and appeal timelines apply to the decision. However, timelines for the city to prepare the appeal package, and forward to the LPAT is suspended until the end of the state of emergency.

In consultation with Legal Services and Community Planning, matters in abeyance could be brought forward to ensure that items are dealt with in a timely manner. In addition, since the shut-down of City Hall, staff have worked out a way to accept and process minor applications remotely and continue to develop a strategy to process larger applications, with the intention to have that implemented in the near future. Therefore, there may be more land use planning applications received and worked on by staff. By proceeding with scheduling statutory public meetings, when the City returns to in-person meetings there may not be a backlog of items to be scheduled.

Council should be aware that a return to large in-person meetings may be gradual, and there may be limitations or restrictions on public access to Council Chambers for an extended period. Therefore, the recommendation is to proceed with bringing land use applications forward for Council, and that virtual statutory public meetings be conducted until further notice. It is anticipated that the earliest statutory public meeting could occur in July.

Statutory Public Meetings

Statutory public meetings are used for land use planning applications under the Planning Act. They balance public participation, with natural justice principles to ensure that land use applications are conducted in an equitable manner. In bringing items to a statutory planning meeting and a recommendation report to Committee and Council, there are significant notice requirements that are required through the *Planning Act*, in advance, and after a Council decision has been rendered. During the public meeting there are certain rules to allow for equity for all participants. After Council makes its decision, there is an appeal process involving the Local Planning Appeal Tribunal (LPAT).

In accordance with the natural justice principles, public participation at statutory public meetings are dealt with differently than customary delegations which have a deadline for registration. At statutory public meetings, as of right, individuals are able make an oral submission without pre-registering. Some individuals choose to pre-register and at the meeting they are allowed to speak in order of when they registered. At the end of all pre-registered delegates, the Chair will then open the floor for any other individuals that may wish to come forward and address committee. This in-person process keeps with the spirit of the Planning Act by way of sections 17(19.2), and 34 (14.2), supporting 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.

It is proposed that the City of Burlington move forward with allowing virtual statutory public meetings. In doing so, there will need to be a process in place in order for the mechanics of a virtual meeting to work as closely as possible to an in-person meeting,

and to preserve the right of residents to be able to not register and still be able make an oral submission before committee. The next section of the report provides a path forward on how this will work. In addition, staffing protocols will be in place to ensure that, live in meeting requests are dealt with appropriately, and in a timely manner.

How will Virtual Statutory Public Meetings be Conducted?

The Electronic Meeting during a Declared Emergency Remote Participation Guide will be amended to include a new section for public participation at statutory public meetings. Staff will work with ITS to ensure that the system is adequately configured to allow for delegates to be added and onboarded during the course of a live meeting. Staff will use learnings from public delegations, in May and June and any Committee of Adjustment meetings, to help inform the process. Refining the process will take an iterative approach, and after the first statutory public meeting there may be further changes to the procedures or to internal staff processes to improve delegate experience. The following will be incorporated into the Remote Participation Guide:

6. Public Participation at Statutory Public Meetings

- 6.1 All requests to make oral submission at a statutory public meeting under this section shall be made by way of electronic submission through the online delegation request form or submitted to the Clerks Department by clerks@burlington.ca. Where possible, those making a request are suggested to do so by noon the day before the statutory public meeting.
- 6.2 All requests to delegate should contain a copy of the delegate's intended remarks which will be circulated to all Members in advance as a back-up to technology. It is understood that those who register during the course of the meeting, may not have the ability to draft and submit written submissions. All rules in the Procedure By-law with respect to delegations (Section 41 Delegations) shall apply to remote delegations.
- 6.3 Confirmed registered delegates will be provided with all applicable access codes and instructions to enter the teleconference or video conference system.
- 6.4 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.
- 6.5 When waiting to be called upon by the Mayor/Chair, all delegates will have their audio on mute.
- 6.6 The Mayor/ Chair or the City Clerk/designate may indicate when the delegate has one minute left to complete their delegation.
- 6.7 During the course of the statutory public meeting, those who want to make a request to provide an oral submission are able to do so by making a submission

in accordance with section 6.1. A tickertape of registration information will be visible on the webcast which provides details on how submit a request.

- 6.8 If there are requests during the course of the meeting, speakers may be added to the delegate list. This will be communicated to the City Clerk/designate who will advise the Chair.
- 6.9 After all registered delegations are completed the Chair would then make a last call for delegations and indicate the deadline time. (As individuals may be following along by way of the webcast, the time would be 5 minutes in the future to compensate for any lag with the webcast.)
- 6.10 A recess would then be called to ensure that all requests made in advance of the deadline can be provided with all applicable access codes and instructions to enter the teleconference or video conference system.
- 6.11 When all requests are dealt with administratively to the satisfaction of the Chair and the City Clerk/designate then the meeting shall resume, and the remainder of delegates will be heard by Committee.

Community Meetings

Community meetings are public meetings hosted by the developer in advance of submitting a land use planning application. Planning Staff have been in contact with Clerks Department staff and ITS on options to use videoconferencing technology. Planning will work with applicants to assist with technology and ensure that provisions are in place, and that meetings are conducted within a set standard. Work will be completed to ensure that notice for these meetings are prepared to effectively communicate ways to participate. Messaging will reinforce that whether an application has yet been received by city, that this is one of many opportunities to submit comment on a proposal through the course of the application review process, and that there are several channels, and opportunities to submit comments.

Committee of Adjustment, Court of Revision, Property Standards

The Committee of Adjustment is comprised of appointed residents 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. Staff in Community Planning will work with, ITS, Clerks, and Communications to ensure that these meetings can resume virtually during COVID-19.

Council Workshops

Council Workshops are meetings which include all members of Council. These meetings are used when time is required for training, discussions with other levels of government, and outside agencies, workshops on complex matters or strategic planning. Customarily, workshops feature a freer flow of dialogue with members of Council with the speaking limits associated with formal meetings not applied.

Staff will proceed to have Council Workshops, and they will occur virtually. However, they may have some limitations such as no breakout sessions. Through meeting preparation, staff will work with the presenters to facilitate any workarounds, that may help to ensure that the virtual meeting best replicates the presenter's intended format or vision for the meeting. Any changes will be communicated in advance to Council and be indicated by way of the agenda or during the meeting to allow the public to be able to follow along. It is anticipated that our next Council workshops (virtual) will be held on June 23, 2020.

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 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

Other models or combinations of participation were discussed at length. One proposal was putting a deadline two hours before the meeting for requests for delegation. This would be different from the customary delegation request deadline. However, based on consultation, having a deadline in advance of the meeting may not meet the principles as outlined in the legislation. It was determined that the electronic version of the statutory public meeting should mirror as closely as possible the in-person experience. Staff are confident that the proposed approach, with the public notice and on meeting modifications will meet the test presented by the Planning Act.

Financial Matters:

The cost of a Zoom license to support virtual meetings for Committee and Council will be funded from the ITS operational budget. Planning may get their own Zoom license to ensure that there is no overlap of meetings, as one license can only conduct one meeting at a time.

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. This will allow for statutory public meetings under the Planning Act to commence. Public participation at statutory public meetings is essential to the process, therefore, access, accessibility and notice provisions have been considered and may be augmented during this time. A staff team comprised of Planning, Communications and the Clerks Department will ensure that these principles are met.

- The notice will contain detailed information on how to connect, participate, the timelines to pre-register and indicate how participation will work during the meeting. All information will be communicated to residents in plain language.
- The city will continue the practice to allow pre-registering to delegate and encourage the public to do so. Deadlines will be aligned with current public delegations to avoid confusion with other items, with the caveat that those wishing to speak during the statutory public meeting portion may request to do so during the

meeting. Written submissions will be encouraged, which may help those with technical difficulties provide input on applications.

- The broadcast will be casted via customary channels which will assist with resident's ability to follow along. The procedures afford for any delays in broadcast to provide the public with a reasonable time to submit a request to delegate. During the meeting a tickertape feature will be part of the broadcast, which will provide information on submitting a request. The Chair will be provided with connection information that will be read out loud as part of the meeting.
- Staff will work with Communications to ensure that a comprehensive approach is taken to ensure that residents understand the ways in which they can participate.
- Access to technology and accessibility concerns will be considered. Staff will work to help mitigate issues if there are residents with a lack of technology. Also, for those who present accessibility concerns staff will work with the individual to find a solution, this may also help improve the overall service to the public in future iterations.
- Although the use of alternative technology to help facilitate the meeting, the city still maintains the ability to include closed captioning during the live broadcast and the captioning is maintained when the recording is posted to the website.

Conclusion:

Approving an August meeting cycle will assist in ensuring that the business of the corporation can continue during COVID-19. Providing for statutory planning meetings, will ensure that land use applications are processed during this time. It may be some time before members of the public are allowed in the Council Chambers, or the City is able to host large gatherings. The proposed path forward is nimble and can be scalable if the Province or public health provides further guidance on public gatherings to ensure city business continues.

Respectfully submitted,

Kevin Arjoon

City Clerk

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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.