



SUBJECT: Procedure By-law amendments in response to SD-30-20 and staff directions reporting

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Office of the City Clerk

Report Number: CL-05-21

Wards Affected: All

File Numbers: 110-04-1

Date to Committee: April 7, 2021

Date to Council: April 20, 2021

Recommendation:

Enact a Procedure By-law for the City of Burlington, in accordance with section 238 (2) of the Municipal Act, and as attached as Appendix A to report CL-05-21; and

Direct the City Clerk to bring a report to the Audit Committee regarding their terms of reference, with respect to risk in relation to the scope of risk under the Corporate Services, Strategy, Risk and Accountability Committee.

PURPOSE:

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture

Executive Summary:

On December 14, 2020 Council passed staff direction SD-30-20 seeking potential amendments to the Procedure By-law (By-law). Throughout Q1 2021 staff reviewed the request and are recommending a slate of changes which includes adding several sections to the By-law. In addition, staff are proposing several minor amendments connected to meeting flow, and to make the By-law more instructive. Staff are proposing to add the following sections or concepts to the By-law:

- Agenda Review

- Motion Memorandums
- Reports from Members of Council
- Urgent Business
- Notices of Meeting vs Notice of Special Meeting
- Notices of Motion
- Motions at Standing Committee
- Motions at Council
- Motions Not Within Jurisdiction of Council
- Staff Directions Process
- Various Housekeeping Amendments
- Addition of Appendix B of the Code of Good Governance to Schedule B of the By-law

The Audit Committee clarification will be deferred to a subsequent amendments package, as staff will be preparing a report to Audit to review their Terms of Reference document with respect to corporate risk management roles.

Background and Discussion:

At the December 14, 2020 Council directed staff to review the Procedure By-law to provide greater clarity on how members placed items at Standing Committee and Council and the scope of such motions. The motion ratified by Council is as follows:

Direct the City Clerk to prepare a staff report with recommended updates to the Procedure By-law on the following items:

- Add definitions to the Procedure By-law for council memorandums, staff reports, municipal officer reports and resolutions; and
- Provide guidance on how members of council's items are submitted to standing committees versus straight to council; and
- Review the notice of motion section to refine and include deadlines (time) for motions to committee and council; and
- Define an agenda review process for standing committees and council, including the Chair's role; and
- Provide clarity on items that are provided to Audit Committee versus Corporate Services, Strategy, Risk and Accountability Committee. (SD-30-20)

Staff reviewed the motion, conducted a thorough review of the current Procedure By-law and are recommending potential amendments by way of this report. The proposed amendments will establish a formal process on how motions or reports received from members of Council are processed. Central to this discussion are the duties of the City Manager as they pertain to reviewing and approving information that may appear on Standing Committee and Council agendas. By-law 132-1991 was enacted on October

28, 1991 to establish the role of the City Manager and provides an overview of their duties. Sections 4 (b) and 4 (c) can be applied to many of the proposed amendments and therefore they have been listed to provide context.

Excerpt from By-law 132-1991, the City Manager By-law:

- 4 (b) To review all staff recommendations and reports prior to their submission to Standing Committees and to Council and when deemed necessary to submit comments on the said reports. In the case of long reports, the City Manager may request or direct staff to prepare executive summaries.
- 4 (c) To ensure that all resolutions and By-laws submitted to Committee and Council accurately reflect the goals and objectives of the City.

The City Manager has a role in reviewing all items brought forward for consideration by Committee and Council. Staff have crafted amendments in this report that reflect this authority, and to include more recent documents such as the Code of Good Governance and the Council Staff Relations Policy. In addition to responding to the staff direction SD-30-20, staff took the time to review the By-law and propose several housekeeping amendments to clarify the By-law or to re-align wording with proper meeting procedures.

In an effort to further refine agenda deadlines and provide clarity regarding agenda items, staff are proposing the following amendments:

Motion Memorandums:

Staff are recommending the addition of a motion memorandum which is a prescribed form issued by the City Clerk on which a member must submit a motion. The form is utilitarian, as it may be used when communicating a motion (advocacy or regarding the administration of the city), submitted after a notice of motion is read at Council, or to support a petition, communication or delegation that is not listed on the agenda. Appendix B is an example of a completed motion memorandum, please note that the form will provide the following areas:

Subject – provides the subject of the memorandum

Target Committee – drop down featuring all standing committees and Council

Motion Section – mover will enter the motion for discussion

Rationale – allows for mover to add a bit of background to the motion

Desired Outcome – a brief statement

Alignment to Vision to Focus – check boxes with different vision to focus areas

Share with Staff - the mover gives permission for Clerk to share motion with pertinent staff

Finally, all motion memorandums are suggested to be approved by the Clerk for format and then by City Manager to ensure the motion is in keeping with the Code of Good Governance, Council-Staff Relations Policy and an assessment of the internal capacity within the administration to complete the work based on a specific target date (quarter/year). The 2018 Council Resource manual included a section on motion memorandums, the By-law amendments will make them the mandatory format for members to add an item to the agenda. As always, if Members of Council require assistance drafting a motion or staff direction, requesting a time sensitive report or seeking other clarification related to the above items, staff are the available to assist. Members are asked to keep the City Manager apprised of draft motions.

Completed motion memorandums will form part of the agenda and afford residents and members of Council additional background when reviewing and considering a motion. In previous By-law amendments, the petitions and correspondence sections indicated the need for a Municipal Officer's Report (not defined previously) when presenting items not already listed on the agenda. Municipal Officer's Report (now defined as Urgent Business) are communication channels used by staff for time sensitive matters. Delegations, petitions and correspondence sponsored by members of Council can be supported through a motion memorandum.

Reports from Members of Council

Creating parameters around what types of reports could be authored by members of Council allows for the Corporation to mitigate risk and ensures that any resolution to spend funds, alter council policy or amend a by-law is accompanied by a staff report. Council members are able to submit information reports through to the Corporate Services, Strategy, Risk and Accountability Committee (CSSRA) to share information amongst members of Council and to the greater community, regarding conferences, city appointments to boards or commissions or to provide updates regarding the administration of their respective offices. It is recommended that such information reports from Council members be received and filed. Reports from Council members should not include recommendations as in keeping with the code of good governance, the City Manager and by delegation, staff are responsible for making recommendations and Council is responsible for consideration and approval of same.

Municipal Officer's Reports change to Urgent Business

It is proposed that the Municipal Officer's Report section of the By-law be changed to Urgent Business. This section is provided to allow items from staff that are time sensitive, and reinforces that non-urgent items must be presented to a standing committee to allow for debate. This renamed section is aligned with how the Municipal Officers report portion of the agenda is currently managed. It provides clear rules, including that the reports must clearly indicate why Council's consideration of the recommendation is of an urgent or time sensitive nature. The Clerk in connection with

the City Manager will review all requests for reports on the Urgent Business section, and determine what is added, or referred to the appropriate Standing Committee.

Notice of Meeting and Special Meetings

Staff have reviewed the notice of motion section of the By-law and are proposing changes to streamline the section. Several subsections describing types of items that the agenda provided notice for were removed and replaced with a succinct sentence that encompassed all potential items. Three subsections were moved from Notice of Motion to the Special Meeting section as they pertained to notice requirements for Special Meetings.

Agenda Review

Based on the direction from Council, and current practice, staff are proposing to add an agenda review section in the By-law for Standing Committees and Council. The proposed section outlines attendees, and meetings will occur in advance of the issuance of the agenda to review. The agenda review members have the following abilities:

- Move or remove any item under the Consent Agenda section of the agenda
- Re-arrange the order of business
- Defer any item on the Agenda to a subsequent meeting
- Cancel any meeting, due to the lack of items to constitute convening

As a recent practice, standing committee Chairs have been meeting with staff before the agenda is reviewed which gives time for the Chair and senior staff to review proposed items and to ensure that the meeting is manageable. The ability to defer an item is a new addition, however this ability could be used as another tool to further refine meeting agendas and plan for more efficient meetings.

Notice of Motion

The Notice of Motion section has been amended to reflect the proposed motion memorandum process noted above. In addition, subsections have been added to provide guidance to members on the use of the Notice of Motion section on the Council agenda. This section allows members who wish to provide notice of a motion, for consideration at the next meeting, which includes notices to reconsider or rescind. It is recommended that the Notice of Motion section be moved later in the agenda, just before the By-law section, as this is customarily one of the last pieces of business to be completed at a Council meeting. At this time staff do not propose adding a Notice of Motion section at Standing Committee, however based on its use at Council, it may be considered in a future Procedure By-law amendments package.

Defining what Motions may be Introduced at Standing Committee or Council

In response to the staff direction SD-30-20, staff have recommended the addition of a taxonomy for what matters can be introduced at what body. These recommendations have taken into consideration past practice, what is best for the administration of the City, and mitigating potential risk.

Motions at Standing Committee

Members are encouraged to bring motions related to the administration of the city to the appropriate standing committee for introduction and debate. The appropriate committee will be determined by the terms of reference as outlined in the By-law. The introduction of these types of motions is best done at the standing committee level, it allows for a fulsome debate before it is dealt with by Council. It is further recommended that motions requesting a policy or by-law amendment be directed to the City Manager or appropriate department for review with a report back to committee, this stems back to the authority and oversight of the City Manager as established through the By-law 132-1991. It also allows for staff to be able to review the change and provide additional context for consideration before the change occurs.

Motions with a substantial financial or budget implication may be introduced but must be referred to the Chief Financial Officer for review on financial impacts with a supplemental report. This will ensure that items are properly budgeted for, and that before passing the motion Council is aware of the potential financial implications.

Motions at Council

Council is a final decision-making body, with limits on debate. Therefore, it is recommended that motions that are introduced directly at Council should be related to the following:

- Motions pertaining to a sponsored petition
- Motions in support or opposition to proposed or pending legislation from other levels of government
- Motions in support of resolutions passed by other councils
- Motions of advocacy to other levels of government

Motions Not Within Jurisdiction of the Council

To further refine the scope of Council and its ability to bring matters forward it is recommended that a statement on matters not within the jurisdiction of Council be included in the By-law. This will ensure that items in the jurisdiction of other levels of government are not brought forward to Council, such as the Region, the Province or Federal government.

Including this provision is a best practice and ensures that Council does not take action on something it does not have statutory authority over, or that is not within its authority, also known as being “ultra vires” (beyond the powers of the municipality).

Staff Direction Process – Established

As introduced by [Report CL-01-21](#) staff have modernized the process to capture staff directions by using the City’s agenda management tool. At the January meeting it was requested that all members of Council be notified when a staff direction completion date (by quarter) has been changed. The report also introduced a regular reporting schedule and assigning deadlines for work requested by Council. Further to the report and to provide clarity and greater transparency, staff recommend adding a section on staff directions in the By-law.

Defining Staff Directions and Process

The proposed amendments including defining a Staff Direction; as a request from Council for research or additional and or supplemental work to be completed by staff. Staff directions may come in the form of a motion memorandum, or an amendment to a staff report’s recommendation, with all directions voted upon by Council. Only approved staff directions will be actioned by staff. All staff directions are recorded by the Clerk in the minute record. Further, this section of the By-law establishes reporting mechanisms, noting that after each Council meeting, a listing of the approved staff directions, the lead Department, and target completion dates (by quarter) will be provided and quarterly a full listing of outstanding staff directions will be issued, and form part of the Council Information Package.

Staff Directions at the end of the Term/New Term

In reviewing the staff directions process, staff are proposing that the staff directions of the previous term be considered and reflect the priorities of the incoming Council. In so doing, part of the incoming Council’s initial duties will be to review the current staff directions list and by motion move items that are of interest or support that council’s priorities to a new staff directions list. This is consistent with practices at the Provincial government.

Staff Directions Reporting

At the January CSSRA meeting, CL-01-21 recognized the need for accountability and transparency and committed to provide an updated list of staff directions to Council by the end of the first quarter of 2021. The list has been appended to this report as Appendix C. The report was issued on March 26, 2021 which has upheld staff’s commitment to disclosure.

Items on the list are presented in meeting date order, and will provide information on the following fields:

Meeting Type
Meeting Date
Agenda Item
Department (assigned to)
Staff Direction (wording from the motion)
Councillor (listed the member on file)
Due Date (by quarter)
Status

Moving forward this list will be provided to Council and the public by way of the Council Information Package, on a quarterly process. In November 2020, the Burlington Leadership Team (BLT) started to review and cull the staff directions list, for items that were completed. This report has also provided the list of the completed items and is attached as Appendix D.

Appendix B of the Code of Governance (Compliance)

In completing the comprehensive review noted above, staff discovered that the Code of Good Governance (Schedule B to the By-law) was missing the correspondence Appendix B or Compliance with the Code of Good Governance. This document was approved with the Code of Good Governance by Council on April 23, 2018 and provides guidance on how complaints are reviewed, mediated or investigated. Staff are recommending that this document, as part of the Code, should be appended to the By-law for accountability and transparency purposes.

Housekeeping Changes to the By-law

Staff are also proposing additional housekeeping changes to the Procedure By-law including:

- Ensuring names of departments are consistent throughout the By-law and reflect the update changes approved by Council in December 2020.
- Changing the short-form name to the *Municipal Act* and fixing all subsequent references to that Act throughout the by-law.
- Moving up Recognitions and Achievements in the Order of Business, to be grouped with the ceremonial functions of Council.
- Changing the Council agenda headings from Motions to Motions of Members, to be indicative of the action, and to change the heading in the By-law Motions, to read as Motions at the Meeting.

- Referencing in By-law to Schedule A to describe the motions in that schedule as subsidiary and privileged motions.
- Changing the Motion to Receive and File Council Information Package (CIP) heading to Council Information Package. In reviewing the CIP section, if a member wishes to have an item pulled out for consideration, they are required to contact the Clerk and the item will be placed on the appropriate Standing Committee agenda. From a records management standpoint, having all the CIP items received and filed means that all items in the CIP therefore become permanent records. Typically, these are items that Council did not action or speak to, therefore they should not be preserved permanently. Any items pulled out for consideration would be reflected as part of the public record.
- Changing the current agenda title from Motion to Confirm Proceedings of the Council Meeting, to Confirmatory By-law. In practice while Council has approved a motion to confirm the proceedings, a by-law has been enacted to confirm the meetings proceedings. To ensure greater transparency, staff are recommending the title change to Confirmatory By-law which will require a separate recorded vote of Council and the by-law be listed on the agenda.

Audit Committee:

With the creation of the CSSRA Standing Committee there is now an overlap of corporate risk management roles and responsibilities between CSSRA and Audit. Some of the Audit Committee's duties and mandate are included in the By-law. However, there is a separate Terms of Reference for Audit, approved on June 12, 2017 that also exists. The Terms of Reference should be reviewed and be re-aligned with the current Standing Committee structure. Staff recommend that the Audit terms of reference be reviewed, and that the following functions remain:

- i. Financial Statements
- ii. External Audit Function
- iii. Internal Audit Function (City Auditor)

Staff (coordinated by Clerks) will bring forward a report to the Audit Committee in June to review the areas related to the Corporate Control Framework and Risk Management specifically regarding matters/reporting:

- New Enterprise Risk Management System
- Corporate Project reporting/risk management
- IT security reporting
- Health & Safety
- Insurance/Risk Management program portfolio

Once that report is reviewed by Audit and considered, any amendments will be brought before Council. It will also be recommended that the Audit Terms of Reference be included in the Procedure By-law as a schedule, and that the applicable sections within the By-law that speak to anomalies in the way the Audit Committee functions in comparison to the other standing committees is conducted be removed.

Strategy/process

Establishing guidelines on the format for items submitted by members for consideration will create a standard for how various motions are communicated to Council and the public. Adherence to committee and Council agenda deadlines will help to ensure that there is enough time allotted for staff to conduct a review and ensures that the item will be correctly listed. Creating a taxonomy of what goes where allows for a predictability for residents and members. The taxonomy also takes into consideration limits upon debate between standing committee and Council and that Council is a final decision-making body.

Options Considered

With each Procedure By-law amendments package the Office of the City Clerk looks at the By-law as a whole and uses the opportunity to bring other items forward. In addition, staff have identified additional areas for improvement that will be provided in a future amendments package.

- Creating an Approval of the Agenda/ Approval of Order of Business Section
- Allowing for Recorded Votes at Committee (by request)
- Review of Closed Meeting Practices and to create a Closed Meeting Protocol
- Review of the Public Notice provisions for the City of Burlington (former Schedule E) and bring back a Public Notice Policy as per section 270 of *the Municipal Act*
- Motion to Table and developing different types of reports to gain Council feedback
- Reviewing agenda distribution timelines

Financial Matters:

Not Applicable.

Climate Implications

Not Applicable.

Engagement Matters:

As the main subject of this amendments package contains motions, which may lead to staff direction and reports, an amendments package was circulated internally to all members of Burlington Leadership Team (BLT) and discussed at a BLT meeting.

Conclusion:

Enhancing the rules of procedure will help to provide members with the necessary structure and guidelines to assist in how items are introduced.

Respectfully submitted,

Kevin Arjoon

City Clerk

905-335-7600 ext. 7702

Appendices: (if none delete section)

- A. Marked Up Proposed Procedure By-law
- B. Motion Memorandum Form and Example of Completed Motion Memorandum
- C. Staff Directions List for Q1 2021
- D. List of Completed Staff Directions based on Review Completed Q4 2020 and Q1 2021

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.