

The Purpose of the Repeal of By-law 31-2021 as amended as attached as Appendix B to Office of the City Clerk Report CL-01-2014 is among other things to build more citizen engagement.. Our limited review given the posting on September 4, 2024 of changes and deletions clearly demonstrates the amended by-law **does not achieve the intended purpose in terms of public engagement.**

2014 was the last Procedure By-law that we believe truly enhanced public engagement. Since then we believe the public/stakeholders' role in Burlington's governance decisions has been consistently weakened. One example that comes to mind was the removal of the definition of "Transparency" last listed in the 2014 edition. Although the Corporate Policy claims it is part of the 2016 By-law:

"Transparency" means the principle that the City of Burlington actively encourages and fosters stakeholder participation and openness in its decision-making processes. Additionally, transparency means that the City of Burlington's decision-making process is open and clear to the public.

There was no explanation as to why a 2016 three person committee that included our present Mayor in her role as Ward 2 Councillor, did not make an archived record of why they felt it necessary to remove this definition from the by-law or “*Whereas Section 11 (2) of the Municipal Act 2001, c. 25 provides that upper and lower tier municipalities may pass by-laws respecting accountability and transparency of the municipality and its local boards and their operations. And*

“Transparency” means the principle that the City of Burlington actively encourages and fosters stakeholder participation and openness in its decision-making process is open and clear to the public.”

Choosing instead of a by-law as indicated by the Province to describe the city’s transparency and accountability requirements, council placed the city’s transparency and accountability requirements in a corporate policy that has a long past due expired review date. (Last approved April 18, 2017 and next review date April 18, 2022)

4 provisions of the Procedure By-law that could be temporarily suspended through a 2/3 majority vote were upgraded to “*any of the Procedure By-laws that a 2/3 majority of council wished to suspend (except for those set out in legislation)*”

Perfect example is the July 19, 2024 Special Meeting where council speaking time “and those Council wanted to hear from” was extended

but the request for flood victim delegation time to be extended from 5 minutes to 10 was denied.

As well Section 239 (7) of the *Municipal Act*¹ in terms of the Municipality's responsibility to produce an accurate and informative set of minutes has been repeatedly set aside regardless of the Ombudsman and former Provincial Ombudsman Andre Marin as our counsel of record reiterated what every council member is told upon election "*Legislative requirements of members of Council must be complied with*" and Procedure By-laws otherwise a state of "*ultra vires*" without authority exists. e.g. Special Council meetings arranged through the annual meeting calendar do not have any decision-making authority. .

In other words the city stakeholders since 2016 have been shut out of governance decisions. Post 2018 no longer do the minutes reflect the issues that were brought forward by members of the public through delegation as they should under 239 (7) , nor was any form of explanation provided. . Rather, the delegation section of the minutes just had the title of the matter with no explanation being provided to the public as to why Section 239 (7) of the *Municipal Act* was now set aside with every set of minutes of Burlington Council and Committee

¹ See last page of delegation notes

meetings, that received delegations, that were written, approved and placed on the City Calendar and then at the right time archived..

Further, the public lost their right to raise issues of improper minuting that contravened the *Municipal Act* by the disappearance from the agenda of Matters Arising from Previous Minutes. This was the one opportunity for stakeholders raise issues of wrong information becoming part of the archival record and a means to correct such, now gone by the wayside. Previously, the public, with the help of Council/Committee members who voted to amend the minutes, that included the then Ward 2 Councillor Marianne Meed Ward; were able to effect the appropriate record of council discussions being properly maintained.

Its not just the public that have been affected by these changes.. The Audit Committee members are not allowed to approve their Committee's minutes. Rather this is achieved by Council who have absolutely no idea for the most part (given their much reduced membership on this Committee) of whether the minutes are correct and yet have the power to approve them before placing them in the archival record.

Numerous attempts over the years since 2014 have been made through the Audit Committee, Council, three City Managers, two Heads of

Legal and the City Ombudsman and Integrity Commissioner to have governance decision-making and improper process followed issues addressed. Our latest attempts (and we know we are not the only ones bringing such matters to the attention of those who can and should be addressing them).was January 2024 when we met with Tim Commisso, Blake Hurley, Jacqueline Johnson and the new Head of Human Resources to try and resolve matters that are clear violations of legislation that include the *Municipal Act*, *Municipal Elections Act*, *Planning Act* and perhaps the *Criminal Code of Canada*.²

The one meeting that was held saw no resolution and Tim Commisso decided he would be leaving earlier than we had understood from the media. So, sadly this will likely become part of more Ombudsman's and Closed Meeting Investigations increased billings rather than council and the Clerk's office working together with their constituents to restore compliance with legislation as it used to be. .

With this complete revamp of the Procedure By-law we see the means to avoid complaints and have means to publicly address the significant issues other than through Ombudsman's complaints which most see as a

² See Addendum to Preamble pdf reviewed at Jan 24, 2024 meeting with Tim Commisso, Blake Hurley, Jacqueline Johnson and Sue Evfremidis

waste of taxpayers money, including through Section 274 (1) of the *Municipal Act*.³

The decision of council to by-pass *Procedure By-laws* and

- reduce city publicly promised normal delegation speaking times
- be non-compliant with the legislated requirement that Special Meetings can only consider the matter(s) the Special Meeting was called to address on August 7, 2024;

has left the City open to the further risk of appeal and dismissal of any defence they would have had if they had followed their own accepted and approved *Procedure By-law*.

Our requests to Lisa Kearns to address the relevant Ward 2 community on the non-compliance with legislation resulting in invalid Application approvals and outstanding health and safety issues including spill hazards for 274 Brant with a motion for reconsideration has up to this point in time gone unanswered by Councillor Kearns.

Case Law shows Conservation Halton have had to pay dearly (which means taxpayers) for not being compliant with their own rules. City of Burlington should be treated no differently by the judicial processes that

³ Requires a resolution of council to investigate any governance matter

it goes before knowing it was not following its own rules set out in the *Procedure By-law* August 7, 2024..

Recommended Changes:

1. By-law definitions to include ``Quorum is 50% of Committee membership plus one and any other requirements set out in a Committee`s Terms of Reference. The Clerk after declaring a quorum present must offer any member of the public who disagrees with the Clerk that a quorum is achieved the opportunity to address council as to why a quorum is not present.
2. The Audit Committee minutes prior to approval by the Council must be approved by the majority of the members of the Audit Committee who were present at the meeting. Amendments can be made to the minutes if the majority of those present agree they should be made prior to going to Council for approval.
3. When a member of a Standing Committee, Advisory Committee or Council challenges the validity of a registration to delegate at Committee or Council, the prospective delegate must be given the

opportunity to address council or committee, prior to their registration being deemed invalid.

4. When the City decides to invoke the city by-law that restricts attendance on City Hall properties including Council Chambers and public/accessible washrooms due process must be provided to the accused.

5. When a member of the Public informs a Committee or Council Clerk, a member of Council or the City Internal Auditor that they have information regarding non-compliance with any piece of legislation or the procedure by-law they must be given the opportunity to speak to the non-compliance to the Audit Committee or Special Audit Committee whose duty is to consider an report to council on such non-compliance. e

6. Matters Arising from Previous Minutes to be included in the Council and Standing Committee Agenda. Members of the public have a right under Matters Arising from Previous Minutes to address decisions of council, standing or advisory committees that have been made outside of the legislative requirements.

This may well prompt Motions of Reconsideration being presented by members of Council. This addition to the By-laws should significantly

reduce the Ombudsman, Integrity Commissioner and Closed Meeting Investigator billings to the city.

We have almost used up our ten minutes on the *Procedural By-law Agenda* item. We have identified many issues with the draft by-law presented to Council other than referenced in this delegation but time available to us after posting in the agenda as well as time allocated to speak to the *Procedure By-law* at this Committee demands we save those significant issues for the 5 minute council delegation we are permitted.

Note examples of councillor and staff behaviours that have prompted these changes to the *Procedure By-law* will be appended to this report to Committee prior to submission to Council.

Footnote 1:

Municipal Act 239 (7)

Record of Meeting

(7) A municipality or a local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. 2006, c. 32, SCHED. A, s. 103(3).

Discussed at January 24, 2024 meeting with Tim Commisso and Blake Hurley but record of discussion promised to Anne and Dave Marsden by the now Director of Human Resources has never been supplied regardless of several reminders and requests.