

TO: CITY MANAGER 1999 NOVEMBER 01

FROM: DIRECTOR FINANCE &  
CITY CLERK

**SUBJECT: LOCAL GOVERNMENT STATUTES  
AMENDMENT ACT 1999 - BILL 88**

PURPOSE: The purpose of this report is to advise Council of procedural and financial management changes required under Bill 88.

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RECOMMENDATION:

1. THAT Council request the Solicitor to prepare a bylaw to repeal Burnaby Procedure Bylaw 1971, Bylaw No. 6023 and to prepare a new comprehensive Procedure Bylaw to include the requirements of Bill 88 as outlined in this report.
2. THAT the budget process be amended, as detailed in this report, to comply with the requirements of the Municipal Act.
3. THAT Council request the Solicitor to prepare a bylaw, prior to year end, separating the property tax due dates from the annual tax rates.
4. THAT a copy of this report be sent to the Parks and Recreation Commission for information.

**INTRODUCTION**

On 1999 September 28 the Provincial Government enacted changes to the Municipal Act of B. C. which will require Municipalities to entrench procedures for Council meetings and specific types of Committee meetings in a Procedure Bylaw and to adopt new procedures for the conduct of general advisory Committee meetings.

Bill 88 also sets out new requirements and processes for budget preparation and financial planning by local governments.

The Ministry of Municipal Affairs is providing local governments with a 90 day transition period beginning 99 September 28 to bring bylaws and procedures up to date with the Bill 88 requirements. The financial management aspects of the bill will come into effect on January 01, 2000. Part I of this report will outline the procedural requirements; Part II will outline the financial management requirements.

## **PART I**

### **Council/Committee Meeting Procedures**

The Municipal Act requires Council to establish, by bylaw, the procedures that are to be followed for the conduct of its business including the manner by which resolutions may be passed and bylaws adopted. In addition Bill 88 requires the Procedure Bylaw to:

Establish the procedures that are to be followed in conducting meetings of;

- Select and standing committees of Council;
- Any other Committee composed solely of Council members;
- Establish the time and place of regular meetings of Council, select and standing committees and other committees composed solely of Council members;
- Require advance public notice respecting the time, place and date of Council and all Committee meetings and establish the procedures for giving that notice.

For the information of Council, a select committee is any committee established to conduct an investigation into and report on a specific topic; a standing committee is any committee with membership of 50% Council members and 50% other individuals; an advisory body is any other committee of Council.

Notice must be posted for all Council meetings and Committee meetings, both open and closed. The Notice must specify the time, date and place of the meeting as well as a synopsis of agenda items to be discussed. A new notice board will be installed outside the Clerks Department for the posting of all notices pertaining to Council and Committee meetings. The Notices will reflect the time, date, and place of each meeting as well as a brief synopsis of items to be discussed. Committee minutes and agendas will be available for public review in the Clerks Department.

Committee agendas and the conduct of their meetings will now be entrenched within the Procedure Bylaw in the same manner as the order of Council business and the conduct of Council meetings.

The Board of Variance, Advisory Planning Commission, Parks and Recreation Commission, Local Court of Revision and all other current Council committees *not* composed solely of Council members fall within the definition of Advisory Bodies and as such are not part of the Procedure Bylaw, but still must comply with the new requirements including:

- Must keep legibly recorded Minutes, signed by the Chair or Presiding Member, and open for public inspection in the same manner as Council Minutes;
- May hold a closed meeting as part of a regular open meeting provided the subject matter to be discussed meets the criteria for inclusion in a closed meeting as set out elsewhere in this report;
- Must adopt the appropriate resolution prior to moving into a closed portion of a meeting;
- A Chair or Presiding Member may expel a person for improper conduct, excluding them from participation in the meeting;

Future amendments to the Procedure bylaw, if required, must be done at a regular Council meeting in accordance with a notice in writing given and openly announced at an earlier regular meeting.

#### Public Notification of Council/Committee Meetings

Currently Council, in November of each year, adopts a staff report which sets out the Council and Committee meeting dates for the coming year. In addition an annual calendar is prepared which sets out the Council meeting dates for the coming year and is available on the City's website as well as for public distribution. It is recommended staff continue with the Council/Committee meeting schedule report and calendar adding a Committee meeting calendar to the available information. This coupled with an expanded Reminder page in every Council agenda and the posting of notices should fulfil the new public notice requirements of the Act.

### Public Access to Municipal Meetings

As a general rule, Council meetings must be open to the public. As previously stated, this requirement also applies to Council committees, a board of variance, a local court of revision, an advisory committee or other advisory body established by Council under the Municipal or other Act, a prescribed body, or a body which, under the Municipal or other Act, may exercise the powers of the Municipality or Council.

A part of a Council, committee or other meeting of an advisory body may be closed to the public if the subject matter being considered relates to one or more of the following:

- personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;
- personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;
- labour relations or employee negotiations;
- the security of property of the municipality;
- the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure might be reasonably be expected to harm the interests of the municipality;
- law enforcement, if the Council considers that disclosure might reasonably be expect to harm the conduct of an investigation under or enforcement of an Act, regulation or bylaw;
- consideration of whether the disclosure of information relating to the acquisition, disposition or expropriation of land or improvements, or law enforcement matters apply in relation to a matter;
- litigation or potential litigation affecting the municipality;
- the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- information that is prohibited from disclosure under S. 21 of the Freedom of Information and Protection of Privacy Act;

- a matter that, under another enactment, is such that the public may be excluded from the meeting;
- the Lieutenant Governor in Council may make regulations prescribing a matter which may be considered in a closed meeting.

Before a meeting or part of a meeting is closed to the public the Council or committee must state, by resolution, that the meeting is to be closed and the basis on which the meeting is to be closed. As stated earlier, these requirements are applicable to all meetings of Council, Council Committees, Boards, Commissions, or other Advisory Bodies.

The resolution to be used in all Council and Committee meetings to move into a closed session reads as follows:

“THAT the (name of Council/Committee) in accordance with S. 242.2 and 242.3 of the Municipal Act of B. C. do now resolve itself into a special closed meeting from which the public is excluded to consider matters concerning (list each of the criteria under which the meeting is closed).”

The requirement for advance posted notice for all meetings, including closed precludes Council and Committees from conducting a closed meeting on the spur of the moment. The procedure bylaw must also set out a process for canceling Council/committee meetings as well as for calling additional regular or special Council/committee meetings. This process requires a resolution of the Council or Committee in order to cancel or add a meeting.

#### Conflict of Interest Guidelines

Bill 88 broadens the criteria for consideration of conflict of interest to Council members participating in any meeting whether it is a regular Council meeting or Committee meeting. If a Council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter or vote on a question with respect to a matter because the member has a direct or indirect pecuniary interest in the matter or for any other reason, the member must declare this and state the general nature as to why the member considers this to be the case.

Whether or not a declaration is made, if a Council member has a direct or indirect pecuniary interest in a matter the member must not participate in the discussion of the matter, vote on the matter or attempt in any way, before, during or after the meeting, to influence the voting on any question in respect of the matter.

## PART II

### Summary

The major changes in financial management are in the following categories:

- Financial Planning
- Financial Report
- Emergency Expenditures
- Use of Municipal Funds
- Fees and Charges
- Licencing
- Property Taxes

### Financial Planning

The budget process has been amended significantly by Bill 88. There is no longer a requirement for the Provisional budget; the Annual and Capital budgets have been replaced by a requirement for a five year financial plan and there must be a process of public consultation regarding the proposed financial plan.

Burnaby has a solid, effective and efficient budget process that provides an early indication of financial needs for the coming year, forms the basis for comprehensive financial control and allows the opportunity to accommodate financial challenges within a methodical, planned process. Therefore, it is the intent that the changes introduced by Bill 88 will be used to enhance the budget process rather than replace it.

It is the recommendation of staff that Burnaby continue with the Provisional budget process in order to provide expenditure authority and financial controls from January 01 each year.

In January each year the City will solicit input and comments from the public using the Provisional budget as a discussion document. In satisfaction of the legislation, advertisements will be placed in the local media with a brief summary of the budget and the methods by which a citizen can make comment or obtain further information (ie. letter, e-mail or phone).

The comments would be considered by Council in or about March each year and would help form the basis of the Annual financial plan that will need to be adopted before May 15<sup>th</sup> each year. The financial plan may be amended by bylaw at any time during the remainder of the year.

### Financial Reporting

The requirements for reporting the annual financial statements and the report of Council's remuneration has been ingrained in the legislation. The only change that will affect Burnaby is the requirement that newspaper ads be published informing the public of the meeting at which the reports will be considered in open Council. Copies of the reports will be available for any member of the public, upon request.

### Emergency Expenditures

Expenditures not provided for in the current year of the financial plan are not legal. There is a provision for emergency expenditures, the authorization process for which must be established by Council in advance and any expenditures made under the emergency provisions must be separately reported to Council. A report and bylaw will be forwarded for Council's consideration, in due course, once the scope and definition of "emergency" is more fully detailed by the Province.

### Use of Municipal Funds

The new legislation stipulates that Council members will be disqualified from holding office and be personally liable if they vote in support of an unlawful expenditure, unless the Council member relied on information provided by a municipal officer or employee who was guilty of dishonesty, gross negligence or malicious or wilful misconduct. The legislation no longer provides for possible personal liability of municipal officers and employees who obey the bylaw or resolution which authorized an unlawful expenditure.

### Fees and Charges

The new legislation has substantially broadened local government powers in respect of the imposition of fees and charges. The City now has the power with few restrictions, to impose a fee or charge in respect of all or part of a service or regulatory scheme. Common law limits the amount of a fee or charge to the recovery of costs for the service or regulatory scheme.

A report must be provided to a member of the public, upon request, detailing the make-up or method of establishing the fees or charges.

### Licencing

Cities now have broader regulatory powers to control business practices within their jurisdictions, the most notable of which are:

- expanding the ability to regulate businesses, business activity and persons engaged in business.
- allowing the setting of business licence fees which may be higher than those currently allowed under the Municipal Act (but subject to the restrictions under the setting of Fees and Charges).
- allowing the prohibition of certain businesses within a municipality unless the owner or operator holds a business licence on the terms and conditions specified.
- broadening the circumstances which constitute "reasonable cause" to suspend or cancel a business licence.

### Property Taxes

Under the new legislation taxes are due on July 2<sup>nd</sup> each year, after which a 10% penalty is applied to the outstanding balance. Alternatively the City can choose to establish its own "tax collection scheme" or "grandfather" its current tax collection policy.

The new legislation is a substantial change from Burnaby's current tax collection practice and would result in much more severe penalties for late payments. However, if the City chooses to establish its own "tax collection scheme" tax payers are required to elect, in writing, the municipal tax collection scheme or, by default, be subject to the deadlines and penalties under the legislated scheme. Obtaining, recording and implementing the tax payers' elections would be prohibitively expensive. It is therefore recommended that the City choose to "grandfather" its current tax collection policy with deadlines as of the 2<sup>nd</sup> business day after July 1<sup>st</sup> after which a 5% penalty is applied and any taxes outstanding after the 2<sup>nd</sup> business day in September be subject to a further 5% penalty. To do this Council must, before December 31, 1999, adopt a bylaw separating the existing policy from the annual tax rates bylaw to enable it to be "grandfathered".



Conclusion

The foregoing report outlines the procedural and financial management changes under Bill 88. It is recommended Council proceed with the necessary bylaw preparation and amendments in order to meet the deadline established by the 90 day transition period specified by the Ministry of Municipal Affairs.

Respectfully submitted,



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Director Finance



D. R. Comis,  
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cc. Deputy City Manager -  
Corporate Services  
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A/City Solicitor

