



Item
Meeting2018 July 23

COUNCIL REPORT

TO: CITY MANAGER

DATE: 2018 July 17

FROM: CITY CLERK

SUBJECT: PROCEDURE BYLAW AMENDMENTS

PURPOSE: To amend the Burnaby Procedure Bylaw, Bylaw No. 11714 to ensure compliance with Provincial legislation, clarify and add rules of order, and update the definition of "Public Hearing".

RECOMMENDATION:

1. THAT Council authorize the City Solicitor to bring forward a bylaw to amend the Burnaby Procedure Bylaw, Bylaw No. 11714 as outlined in the report.

REPORT

1.0 INTRODUCTION

Historically, local government elections have been held in November of the election year. Prior to the 2014 local government election, the Local Government Act Section 52 [General local elections every four years] was amended, increasing the term of local governments from three to four years and the election date was changed from November to October. Resulting from the amendments to the Local Government Act election terms and date, the Community Charter was also amended to reflect the earlier election date. Amendments to both the Local Government Act and the Community Charter necessitate amendments to Burnaby's Procedure Bylaw. Additional amendments, not precipitated by amendments to the Local Government Act and the Community Charter are also being proposed.

2.0 INAUGURAL MEETING

Community Charter, Section 124(2)(g) outlines the requirement that a procedure bylaw "establish the first regular council meeting date referred to in section 125(1) [council meetings] as a day in the first 10 days of November following a general election" therefore a bylaw amendment is required to update the timing of the Inaugural Meeting of council to comply with the Community Charter.

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Current

“An Inaugural Meeting will be held on the first Monday in December following a general local election, or an alternate date within the first 10 days of December as determined by Council. The meeting will be held at 7:00 p.m. at a location be chosen by the Mayor-elect in consultation with the City Clerk.”

Proposed

“An Inaugural Meeting will be held in the first 10 days of November following a general local election. The meeting will be held at 7:00 p.m. at a location chosen by the Mayor-elect in consultation with the City Clerk.”

Recommendation: repeal and replace Section 5 (1) to update the date of the Inaugural Meeting as a result of changes to the Local Government Act and the Community Charter and to allow the City Clerk to determine the location.

3.0 PUBLIC HEARING DEFINITION

The definition of Public Hearing currently references an outdated Division and Part of the Local Government Act. As such it is recommended that the definition of “Public Hearing” be amended to reference the current Division and Part of the Local Government Act.

Current

“Public Hearing’ means a hearing held under Division 4 of Part 26 of the Act”

Proposed

“Public Hearing’ means a hearing held pursuant to Division 3 of Part 14 of the Local Government Act.

Recommendation: update the Local Government Act Division and Part references in the definition of “Public Hearing”.

4.0 REGULAR CLOSED MEETINGS

Section 7(1) of the Burnaby Procedure Bylaw stipulates that a Regular Closed meeting of Council be held at 6:30 p.m. From time-to-time Regular Closed Council meetings are required to start prior to 6:30 p.m. based on the number of reports or the anticipated discussion time for each item. Currently, a resolution of Council is required to change the start time of a closed meeting. As such it is recommended that Section 7(2) be

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repealed and replaced and a new section be added to allow the Mayor to adjust the start time of a closed meeting in consultation with the City Clerk.

Current

7(2) *“Council may, by resolution, cancel, reschedule or change the time or location of the meeting, or call an additional meeting at the time and place stipulated in the resolution”.*

Proposed

7(2) *“Council may, by resolution, cancel, reschedule or change the location of the meeting, or call an additional meeting at the time and place stipulated in the resolution.”*

Add *“The start time of a Regular Closed Meeting may be changed by the Mayor or the City Manager.”*

Recommendation: repeal and replace Section 7(2) and add a new section to allow the start time of a Regular Closed meeting to be changed by the Mayor or City Manager, without a Council resolution.

5.0 PARTICIPATION IN MEETINGS BY ELECTRONIC MEANS

Section 128 [Electronic meetings and participation by members] of the Community Charter permits a municipality, through procedure bylaw, to permit electronic participation in meetings. Section 10 of the Burnaby Procedure Bylaws currently permits members of Council or board, committee or commission members who are unable to attend a meeting to participate electronically; only the member presiding the meeting is required to attend in person. Members unable to attend a meeting are not currently required to provide advanced notice of their intent to participate electronically to the City Clerk.

The electronic participation of one or more members poses significant logistical and IT challenges. The Council Chamber, Council Committee Room and the Clerks Committee rooms are not presently set up to facilitate the electronic participation of members (on short notice). With appropriate notice, it would be possible to facilitate electronic participation; however no notice is currently required. Considering that Section 6 of the Burnaby Procedure Bylaw requires that Council approve the following year’s schedule of meetings prior to January 1st in each year, it is expected that electronic participation is not required to ensure quorum is consistently achieved.

In recognition of the unique circumstances upon which a Special Meeting could be called, the ability to participate in a meeting electronically may be necessary. It is

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recommended that electronic participation in meetings by members of Council or committee, commission and board members be restricted to Special Meetings only, and that any member wishing to participate in a Special Meeting electronically provide at least four hours prior notice to the City Clerk allowing for the coordination of their electronic participation. It is recommended that Section 10 be amended to allow for members to participate in Special Meetings electronically once appropriate notice has been provided to the City Clerk.

Current

- 1) *In accordance with Section 128 of the Charter a member of Council or a member of a board, committee or commission who is unable to attend at a Council meeting or a board, commission or committee meeting, may participate in the meeting by means of electronic or other communication facilities whereby that member can communicate with the members present at the meeting.*
- 2) *The member presiding at a Council, board, committee or commission meeting must not participate electronically.*
- 3) *A Member participating in a meeting electronically is deemed to be present in the meeting as though they were physically present.*
- 4) *The Clerk shall record in the minute book the members present including those participating electronically.*

Proposed

- 1) *In accordance with Section 128 of the Community Charter, a member of Council or a member of a board, committee or commission who is unable to attend at a Special Council meeting or a Special board, committee or commission meeting, may participate in the meeting by means of electronic or other communication facilities whereby that member can communicate with the members present at the meeting.*
- 2) *The member presiding at the Special Council, board, committee or commission meeting must not participate electronically.*
- 3) *A member unable to attend a Special Council, board, committee or commission meeting, that wishes to participate electronically in the Special Meeting must provide notice to the City Clerk of their intent at least four hours in advanced of the start time of the Special meeting.*

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- 4) A member participating in a Special meeting electronically is deemed to be present in the meeting as though they were physically present.
- 5) The Clerk shall record in the minutes the members present including those participating electronically.

Recommendation: repeal and replace Section 10 to restrict electronic participation in meetings by members to Special Meetings and add an advance notice requirement.

6.0 AVAILABILITY OF COUNCIL MEETING AGENDAS

Section 14 of the Burnaby Procedure Bylaw currently requires Regular Meeting agendas to be delivered to each member’s home, and agendas are required to be delivered at least three days in advance of a Regular Meeting.

According to Section 25 of the Interpretation Act [calculation of time]:

“25(4) In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded.”

Based on Section 14 of the Burnaby Procedure Bylaw and the above referenced calculation of time, any agenda delivered on the Friday preceding the Monday Council meeting would be in contravention of the Procedure Bylaw. Additionally, the Procedure Bylaw does not currently recognize electronic delivery practices for those members of Council utilizing the iPad application. It is recommended that section 14(1) be repealed and replaced to allow for electronic delivery of agenda materials at least 72 hours in advance.

Current

“The agenda of Regular Meeting must be delivered to each member’s address at least three days before the time when a Regular Meeting is to be held.”

Proposed

“The agenda of Regular Meetings must be made available electronically or delivered in hardcopy to each member at least 72 hours before the time when a Regular Meeting is to be held.”

Recommendation: repeal and replace Section 14(1) to allow for electronic delivery of regular meeting agendas and change the delivery time frame from three days to 72 hours.

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7.0 THE PREVIOUS QUESTION

Section 22 of the Burnaby Procedure Bylaw outlines the procedure for Council to consider a motion on the previous question. When a motion for the previous question is called, any proposed amendments to the original motion are no longer considered and Council must immediately vote on the motion as it was originally put. Upon review of the current language it is recommended that the section be repealed and replaced to enhance clarity of the procedure, and identify the voting requirements to pass such a motion as required by Roberts Rules of Order.

Current

“At any meeting a motion for the previous question, until a decision thereon has been made, shall preclude all amendment of the main question and shall be in the following words: “That this question be now put”. If the previous question be resolved in the affirmative, the original questions shall be put forthwith without any amendment or debate.”

Proposed

“At any meeting, once put, a motion to consider the previous question shall be voted on immediately without amendment. A motion to consider the previous question requires a two-thirds affirmative vote to pass”.

Recommendation: repeal and replace Section 22 to provide for a better understanding of the procedure to consider a previous question.

8.0 SUSPENSION OF THE RULE OF ORDER

The Burnaby Procedure Bylaw does not currently reference the ability to suspend a rule of order through a 2/3 vote of Council, as permitted under Roberts Rules of Order. Occasionally, Council may determine that a rule of order, as outlined in the Burnaby Procedure Bylaw should be temporarily suspended to facilitate the business of Council. Examples of when a motion to suspend a rule may occur include, but are not limited to: extending the time allotted to a delegation or a presentation, allowing for another member who is not the designated Acting Mayor to Chair a meeting in the absence of the Mayor, to allow for a fourth delegation to appear before Council.

A motion to suspend a rule of order is limited as it does not apply to procedural rules prescribed by legislation, fundamental principles of parliamentary law (e.g. only one question can be considered at a time), and rules protecting the rights of absentees or individuals (e.g. quorum, notice requirements etc.). It is recommended that a section outlining the suspension of rule of order be added to the Burnaby Procedure Bylaw.

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Proposed

Add as Section 28(1)(a)

“Council, by a 2/3 vote of Council members present, without debate, may suspend a rule of order for the remainder of the meeting or a stipulated portion of the meeting”.

Recommendation: add a section that outlines Council’s ability to suspend a rule of order for a meeting or stipulated portion of the meeting.

9.0 PROPOSED BYLAW AMENDMENTS

Staff propose Council authorize the following bylaw amendments to the Burnaby Procedure Bylaw, Bylaw No. 11714 based on the information provided in the report:

- repeal and replace Section 5 (1) to update the date of the Inaugural Meeting as a result of changes to the Local Government Act and the Community Charter.
- update the Local Government Act Division and Part references in the definition of “Public Hearing”.
- repeal and replace Section 7(2) and a new section be added to allow for the start time of a Regular Closed meeting to be changed by the Mayor or City Manager, without a Council resolution.
- repeal and replace Section 10 to restrict electronic participation in meetings by members to Special Meetings and add an advance notice requirement.
- repeal and replace Section 14(1) to allow for electronic delivery of regular meeting agendas and change the delivery time frame from three days to 72 hours.
- repeal and replace Section 22 to provide for a better understanding of the procedure to consider a previous question.
- add a section that outlines Council’s ability to suspend the rule of order for a meeting or stipulated portion of the meeting.

10.0 CONCLUSION

The Office of the City Clerk seeks to ensure that every Council, Committee, Commission and Board meetings are procedurally sound. This report outlines changes in legislation, seeks to clarify rules of order, and provides a consolidated list of amendments to the Burnaby Procedure Bylaw. If approved by Council, an amendment to the Procedure Bylaw will be brought forward for three readings. Following the three

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readings, a Notice of Amendment and explanation of the purpose of the amendment will be advertised in accordance with Section 94 of the Community Charter. The bylaw would then return to Council for reconsideration and final adoption.



Kate O'Connell
CITY CLERK

Cc: City Manager
Director Corporate Services
Director of Parks, Recreation and Cultural Services
City Solicitor