

EXECUTIVE COMMITTEE OF COUNCIL

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

SUBJECT: BILL 26 AMENDMENTS – PUBLIC NOTICE AND CODE OF CONDUCT

RECOMMENDATION:

1. THAT Council receive this report for information.

REPORT

The Executive Committee of Council, at its meeting held on 2022 July 05, reviewed the attached report providing information on Bill 26 amendments regarding public notice and code of conduct.

Respectfully submitted,

His Worship, Mayor Mike Hurley
Chair

Councillor Mike Hillman
Vice Chair

Copy: General Manager Corporate Services City Solicitor Senior Manager Marketing and Communications

TO: CHAIR AND MEMBERS
EXECUTIVE COMMITTEE OF COUNCIL

DATE: 2022 June 28

FROM: GENERAL MANAGER
CORPORATE SERVICES

SUBJECT: BILL 26 AMENDMENTS – PUBLIC NOTICE AND CODE OF CONDUCT

PURPOSE: To provide the Committee and Council with information on Bill 26 amendments regarding public notice and code of conduct.

RECOMMENDATION:

1. **THAT** the Committee recommend Council to receive this report for information.

REPORT

1.0 INTRODUCTION

The Executive Committee of Council, at its meeting held on 2022 May 3, brought forward for reconsideration a report from the General Manager Corporate Services regarding a Burnaby Procedure Bylaw Review. Arising from discussion, the Committee requested information on Bill 26.

On 2021 November 25, Bill 26 – Municipal Affairs Statutes Amendment Act (No. 2), 2021 (“Amendment Act”) received royal assent, but the “commencement” section 57 meant that only the following key changes were given immediate effect:

- the option to waive the public hearing for a zoning bylaw that is consistent with an official community plan has been revised to be an option to decide not to hold a public hearing, with notice to be given before first reading of the bylaw; and
- allowing the delegation of decisions on “minor” development variance permits, as long as the bylaw delegating the decision includes criteria for determining whether the variance is minor, and guidelines for the delegate to consider when making the decision whether to issue the development variance permit.¹

¹ See *Planning and Development Committee report 2022 May 09 re: Bill 26 – 2021 Municipal Affairs Statutes Amendment Act (No. 2), 2021 (DVP)*

Other provisions were left waiting to be given effect only by further regulation of the Lieutenant Governor in Council (LGC).

A regulation made on 2022 February 28 has now given effect to the following further section applicable to the City:

- revised public notice requirements, allowing local governments to establish, by bylaw, alternative notice methods, such as providing online notice (providing notice via newspaper remains an option)²

The following section of the Amendment Act has yet to come into force, but will apply to Council once it is brought into force by regulation of the LGC:

- requirements that local governments consider developing a code of conduct for council members, or updating an existing code. If a local government elects not to establish or update a code, it will have to give reasons for this decision, and reconsider the decision before January 1st of the year of the next general election³

2.0 POLICY SECTION

This report aligns with the City’s Corporate Strategic Plan.

3.0 REVISED PUBLIC NOTICE REQUIREMENTS

The *Community Charter* and *Local Government Act* require local governments to provide advance public notice of matters of public interest (i.e. public hearings, public meetings, elections, disposition of land, road closure bylaws, etc.). Public notice is required to facilitate transparency and accountability and is part of the public engagement process.

Public notices inform the public of opportunities to participate in local government decision-making and share views. The *Community Charter* sets out the minimum content requirements for public notice and how notice must be provided; however, they do not limit any additional information that the local government may choose to incorporate into a notice or additional methods the local government may choose to use to provide notice to its community.

² See Section 3.2. of the report

³ See Section 4.0. of the report

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3.1. Default Publication Requirements for Public Notice (Section 94.1 of the *Community Charter*)

The public notice provisions that were in place prior to 2022 February 28 (“default publication requirements for public notice”) continue to be an available option for local governments. The default publication requirements apply if a local government has not adopted a public notice bylaw to provide for alternative methods of publication specific to the community. The default rules provide that the local government must:

- publish notice in a newspaper that circulates in the community once each week for two consecutive weeks; or,
- if publication by newspaper is not practicable, the notice may be given in the area by alternative means (e.g., posted on a community bulletin board or directly mailed).

If a local government uses alternative means the notice(s) must be given within the required time period and frequency set out in the *Community Charter*. Council must also consider the notice to be reasonably equivalent to that which would be provided by a newspaper. Alternative means in section 94.1 are not defined in the *Community Charter*, and could include any type of notice that Council believes will adequately reach the community and meet the legislative requirements, such as online advertising, direct mailing and/or radio ad. If the local government is using alternative means to meet the notice requirements, best practice is to provide the rationale for the mean(s) chosen and adopt a resolution in an open meeting.

3.2. Bylaw to Provide for Alternative Methods of Publishing (Section 94.2 of the *Community Charter*)

Section 94.2 provides local governments the authority to adopt a public notice bylaw if they choose not to use the default notice provisions. Local governments that adopt a public notice bylaw must then publish notice by all the methods specified in the bylaw, and are still required to post a notice at the public notice posting places. A bylaw adopted under section 94.2 must:

- specify at least two methods of notice (e.g., newspaper and local government website), not including the public notice posting places; and,
- consider the principles of effective public notice (reliable, suitable and accessible) described by the Public Notice Regulation before adopting a public notice bylaw (see section 3.3. of this report).

Under a public notice bylaw, the notice must be published at least seven days before the matter for which notice is required (unless a different period is prescribed in the *Community Charter*, *Local Government Act* or another Act).

3.3. Principles of Effective Public Notice

Council is required to consider the principles described in the Public Notice Regulation in making public notice choices. These principles are intended to foster a shared set of good governance expectations among local governments and give residents confidence that their local governments will conduct their business in an open and transparent manner.

The principles that must be considered before a public notice bylaw is adopted are:

- Reliable – the publication methods are dependable and trustworthy
- Suitable – the publication methods work for the purpose for which the public notice is intended; and,
- Accessible – the publication methods are easy to access and have broad reach.

As a best practice, local governments may want to note how the principles have been considered (e.g., by resolution, reflected in the minutes, or included in the preamble of the public notice bylaw). A record of the decision demonstrates that Council discussed the principles and that the discussion is on the public record.

For example, if Council is considering whether to use the local government website and a community newspaper as the two required means of publishing notice in their bylaw, they would need to consider if:

- the community can easily access the website, and that the newspaper is distributed broadly in the community (i.e., accessibility principle);
- the community considers that the website and the newspaper will provide reliable and accurate ongoing information (i.e., reliability principle); and,
- the website and newspaper together can meet specific timing requirements (e.g., between three and 10 days) and content requirements (i.e., suitability principle).

3.4. Staff Comments

Local governments now have the option of continuing default notice requirements of publishing in a newspaper, or to adopt a public notice bylaw if they choose not to use the default notice provisions. Under section 94.2 of the *Community Charter*, a bylaw providing for alternative methods of publication must specify at least two different means of publications, not including the public notice posting place at the City Hall.

3.4.1. Consideration of Other Notice Methods

Based on guidance from the Province, possible means of public notice include:

- online or print newspaper;
- local government website;
- local government subscription service;
- community website or newsletter;
- local government Facebook page;
- direct email or mail out; or
- posting at recreation centres.

3.4.2. Newspaper

This is the City’s current practice that comply with applicable legislative deadlines. It should be noted that metrics on the actual level of readership of local newspaper is unavailable to the City.

3.4.3. City of Burnaby Website

Posting notices on the City’s website satisfies the principles of effective public notice (reliable, suitable, and accessible). The website is a readily available to anyone with internet access, and the City has control over the site to ensure that the notices are posted in a timely fashion, are reliable, readily searchable, factual, and otherwise compliant with the requirements of legislation. Users can also find supporting documentation on the City’s website. The City has metrics on the user of the website, which already has a high volume of traffic.

3.4.4. City’s Subscription Service

Another form of notice is subscription service, which is available to Burnaby residents by free subscription. All that a resident requires is access to the Internet and an email address. Subscription service is reliable, suitable, and accessible as a widely available means for the City to publish factual information in a timely manner. This service allows information to be displayed legibly, and notices can be repeatedly accessed by subscribers at their convenience.

However, potential limitations to subscription service include that it may take time to build a subscriber base, and that some area specific notices will not be relevant to all subscribers.

At this time, the Marketing and Communication Department reviewing current subscription service, as this service is migrating to a new platform.

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3.4.5. City's Facebook Page

A local government Facebook page has been identified by the Province as a potential notice method; however, this method does not have any significant advantages over the City's website or subscription service, and has several disadvantages. One disadvantage is that Facebook has a very limited organic reach and declining new user growth. Further, public notices are not a natural fit for content users, who do not generally subscribe to Facebook in order to receive legal notices, which may be lengthy and text-heavy. The formal content of public notices is counter to what tends to be well-received on Facebook.

3.4.6. Email

Sending notices directly to residents' email addresses is another potentially viable option. However, this method does not have any significant advantages over subscription service. A significant disadvantage of email is that the City would have the responsibility to compile and regularly update a list of the email addresses of residents, and this will likely pose a prohibitive obstacle to creating an effective means of notice. There is also uncertainty of knowing if recipients are actually opening and reviewing an email containing a local government public notice.

3.4.7. Online Newspaper, Community Website or Newsletter

Although these methods have been identified by the Province, staff have concerns about the reach of such online media sources, given the perceived limited reach of local newspapers on readership generally. Staff have concerns about the effectiveness of such notices, given that the postings are not under the control of the City, and therefore the City has limited control over issue, such as the accessibility and legibility of notices, and how long the notices are posted for. Further, the cost of using online newspapers for notices is similar to the cost of using the paper format.

3.4.8. Direct Mail Out

Using direct mail out has the advantages of targeting the residents most impacted by the matter at issue. However, the cost of direct mail out is prohibitive as a default means of providing public notice throughout the City for every matter requiring notice. Direct mail out is currently used to supplement the default notice provisions, and staff recommend that this practice continues.

3.4.9. Posting at Recreation Centres/Libraries

Recreation centres and/or libraries may be particularly appropriate for posting notices of matter relevant to the surrounding community. These places are frequently visited. However, recreation centres usually display information pertaining to the recreational activities.

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A disadvantage of using any physical location is that residents would have to travel there to see the notice. Further, common areas may have space limitations, and the manual posting of public notices may leave room for human error.

3.4.10. Staff Recommendations

Staff recommends continuance of current practice - default notice requirements of publishing in a newspaper and direct mail out, while evaluating options discussed in the report. Staff will bring forward a subsequent report, which would also include any comments from the Executive Committee and/or Council.

4.0 CODE OF CONDUCT

Local Governments will be required to consider developing or updating codes of conduct. Bill 26 introduces two new sections into *the Community Charter* that address codes of conduct for Council members. Although these provisions do not make codes of conduct mandatory, they will require Council to consider their adoption.

The first provision, Section 113.1, will require Councils to consider developing a code of conduct for Council members, or review current codes of conduct if any already exist. This consideration must take place within six (6) months after the first Regular Council meeting that follows a General Local Election. If a Council ultimately decides not to establish a new code, or declines to review an existing code, reasons for this decision must be made publicly available.

The second code of conduct provision, Section 113.2, will require reconsideration of a Council's decision not to establish or review a code. This reconsideration must occur before January 1st of the year of the next General Local Election. If a Council confirms its prior decision not to establish or review a code, a further set of reasons for this confirmation must be made publicly available.

There are several considerations Council must take into account when either deciding whether to develop or update a code of conduct under s. 113.1, or reconsidering a decision not to develop or update a code under s. 113.2. In both circumstances, Council must:

- consider the prescribed principles for codes of conduct;
- consider any other prescribed matters; and
- comply with any prescribed requirements.

What these prescribed principles, matters, and requirements will entail is not yet known. Subsequent regulations will provide clearer criteria outlining what must be considered in this process.

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4.1. Staff Comments

Staff will bring forward a separate report after the 2022 general local election, seeking Council's direction on this matter.

5.0 CONCLUSION

This report is provided for the Committee and Council's information. Staff recommends continuance of current practice – default notice requirements of publishing in a newspaper and direct mail out, as it allows to meet the legislative requirements relating to public notice. A subsequent report will be brought forward which would also include any comments from the Executive Committee and/or Council. A separate report on the required Code of Conduct will be brought forward when the prescribed principles, matters and requirements are enacted.



Dipak Dattani
GENERAL MANAGER CORPORATE SERVICES

DD:bz

Copy: *City Solicitor*
Senior Manager Marketing and Communications