



CORPORATE SERVICES *Staff Report*

REPORT NO: COR-2024-44

TO: Council

SUBMITTED BY: Greg Clark, Director of Corporate Services/Chief Financial Officer

PREPARED BY: Jeff Bunn, Manager of Legislative Services/Municipal Clerk

REVIEWED BY: Greg Clark, Acting Chief Administrative Officer

DATE: September 23, 2024

SUBJECT: Procedural By-law Follow Up Information Report

RECOMMENDATION:

THAT Report COR-2024-44 be received as information.

SUMMARY:

The purpose of this report is to provide Council with municipal best practices relating to issues identified in the Procedural By-law by a delegate during the August 26, 2024, Regular Council Meeting.

BACKGROUND:

Every municipality in Ontario is required to have a Procedural By-law. Section 238 (2) of the *Municipal Act, 2001, S.O., c.25*, as amended, requires that every municipality shall pass a Procedural By-law for governing the calling, place and proceedings of meetings. Procedural By-laws are an essential governance tool that provide a set of rules for Council and Local Board meeting which uphold basic parliamentary procedure to ensure fairness for all meeting participants, and consistency in the decision-making process. The goal of every Procedural By-law should be to ensure there is a high degree of meeting efficiency to ensure orderly debate and discussion for the business of the corporation.

As a best practice, Procedural By-laws should be reviewed at least once each term of Council to ensure the governance structure reflects the needs of the Council at the time. The last comprehensive review of Township of Wilmot Procedural By-law was completed on September 11, 2023 and led to Council unanimously adopting By-law 2023-43 on September 25, 2023. That review resulted in a comprehensive overhaul of the By-law to modernize and reflect current best practices in meeting procedure and governance. A copy of Report COR-2023-54 is included in this report as Attachment 1, for reference to the original comprehensive review completed last year.

On June 10, 2024, Council provided staff with the following direction:

WHEREAS Council meetings provide the public with an opportunity to present information to their elected representatives; and,

WHEREAS within the current Procedural By-law, members of the public are only permitted to delegate on select matters included in the Council meeting agenda.

THEREFORE BE IT RESOLVED THAT staff be directed to directed to report back to Council at the July 29, 2024 Regular Council Meeting on municipal best practices and recommended changes to the Procedural By-law as it relates to permitting up to 3 registered delegates at each meeting to speak to any matter of public interest within the jurisdiction of the Township.

On July 29, 2024, Council received Report COR-2024-36, included as Attachment 2. To better understand best practices with respect to the management of public delegations at Council meetings, staff conducted a municipal scan of 24 like-sized municipalities in Ontario. Staff reviewed all Ontario municipalities with a population between 20,000-30,000 to produce a list of comparative municipalities, rather than looking strictly at area municipalities or larger cities. Council unanimously supported the recommendation and directed staff to prepare an amended by-law for adoption at the August 26, 2024, Regular Council Meeting.

REPORT:

On August 26, 2024, Council considered the draft by-law and following a delegation on the matter, provided the following direction to Staff:

THAT Council direct staff to report back at the September 23rd Regular Council Meeting on the municipal best practices and the recommendations included in the delegation heard by B. Wolfe at the August 26th Regular Council Meeting and to present those recommendations in the report.

At the August 26, 2024 Regular Council Meeting, Council unanimously adopted By-Law 2024-42, which included new provisions for General Interest Delegations. A copy of the By-law is attached as Attachment 3.

The delegate who presented at the August 26, 2024, Regular Council Meeting identified 16 issues with respect to Procedural By-law 2024-42. These issues or questions relate to the following sections of the by-law.

- Part 2 General Provisions
 - Subsection 2.6.3 – Minutes
- Part 3 Roles and Duties
 - Subsection 3.3 – Duty of Members
- Part 4 Meetings
 - Subsection 4.3 – Seating arrangement of Council
 - Subsection 4.6 – Staff and members of the public – addressing
 - Subsection 4.7.2 – Inaugural meeting of Council
 - Subsection 4.10 – Regular Meetings of Council – Election Year
 - Subsection 4.15 – Regular Meeting – late additions
 - Subsection 4.23 – Consent agenda – Council
- Part 5 Closed Meetings
 - Subsection 5.3.2 – Attendance in Closed Meetings and Disclosure of Materials
 - Subsection 5.7.3. – Closed Meeting Agendas
 - Subsection 5.8 – Closed Meeting Minutes
- Part 6 Presentations, Delegations and Written Submissions
 - Subsection 6.1. – General Provisions
 - Subsection 6.2. – Presentations
 - Subsection 6.4. – General Interest Delegations
 - Subsection 6.6. – Written Submissions

Staff time reviewing and providing comments on the 16 issues identified resulted in a second full-scale review of municipal best practices related to the Procedural By-law. To conduct the review, staff referred back to the Ontario municipalities with a population between 20,000-30,000 to produce a list of comparative municipalities. Specifically, the following municipalities were reviewed:

- City of Brockville
- City of Clarence-Rockland
- City of Owen Sound
- County of Frontenac
- County of Prince Edward
- Municipality of Leamington
- Municipality of Strathroy-Caradoc
- Town of Amherstburg
- Town of Collingwood
- Town of East Gwillimbury
- Town of Essex
- Town of Grimsby
- Town of Kingsville
- Town of Lincoln
- Town of Orangeville
- Town of Tecumseh
- Town of Wasaga Beach
- Township of Centre Wellington
- Township of Essa
- Township of King
- Township of Oro-Medonte
- Township of Scugog
- Township of Uxbridge
- Township of Woolwich

Combined with the previous review completed in 2023, the Procedural By-law of 48 municipalities across Ontario have been compared to identify municipal best practices.

In addition to the information presented in this report, Legislative Services is currently undertaking a review of the 2025 Council Meeting Schedule and reviewing ways to increase the number of days between the publishing of agendas and meetings dates. The goal of that review underway, is to provide both members of Council and the public with additional time to be informed of Council meetings and the contents of the agenda, as well as additional time to connect with the Township (through staff or the Mayor/Ward Councillors) to ask questions and seeking more information on a topic before the meeting occurs. Staff anticipate bringing forward the results of this review, as well as the 2025 Council Meeting Schedule, in October 2024.

The next portion of this report will systematically address the issues and questions identified by the delegate.

Results of Municipal Scan and Analysis of Issues Identified

Part 2 General Provisions: Subsection 2.6.3 – Minutes

Procedural By-law Text:

2.6.3 The Clerk/Committee Administrator as appropriate will endeavour to post the Minutes to the Township website within 72 (seventy-two) hours of the Meeting but no later than 1 Business Day before the next Meeting and are considered the official record of the Meeting proceedings once adopted.

Issue identified by Delegate:

*2.6.3 (page 13) The Clerk/Committee Administrator as appropriate will endeavour to post the Minutes to the Township website within 72 hours (seventy-two) hours of the meeting, but no later than 2 Business Days before the next meeting....**One day is insufficient notice. In the past agenda items and Minutes have been posted at 5:00 pm on a Friday prior to a meeting on a Monday. THIS SHOULD BE AT LEAST 2 BUSINESS DAYS PRIOR, and preferably 10 days prior TO...***

Results of Municipal Scan and Analysis:

With respect to the publishing of draft minutes, the municipal scan, appended as Attachment 4, highlights that many municipalities either do not mention when minutes will be published following a meeting, or if it is mentioned, range from “as soon as practical” or in “a timely manner” to 7 days prior to the next meeting. Where there is reference to timelines, the date of publishing is often linked to the date of the next meeting date rather than a set date following a meeting. Arguably, this would be to accommodate flexibility, given the unpredictable nature of last-minute special council meetings. In some municipalities, minutes are included in agenda packages and not published on a website until they have been formally adopted by Council. In summary, there is no consistency in the publishing of minutes across municipal comparators.

Subsection 2.6.3. of the Procedural By-law provides staff with flexibility should there be extenuating circumstances that cause the publishing of draft minutes to be delayed. Our operational goal is to have the draft minutes published on the Township's website within 24 hours following the meeting; however, the vast majority of Regular Council Meeting minutes are published within 48 hours of the meeting. This is primarily due to conflicting priorities in the immediate day following a council meeting. It should be noted that the audio-visual recording of the meeting is published on the Township's YouTube channel immediately following the conclusion of the meeting, making a complete record available to any interested members of the public and media.

A review of the past Council meetings in 2024 demonstrates the publishing times for the draft minutes on the Township's Website:

January 15 Regular Meeting	Published January 17	48 hours following the meeting
February 12 Regular Meeting	Published February 14	48 hours following the meeting
February 26 Regular Meeting	Published February 27	24 hours following the meeting
March 4 Regular Meeting	Published March 6	48 hours following the meeting
March 25 Regular Meeting	Published March 27	48 hours following the meeting
April 8 Regular Meeting	Published April 9	24 hours following the meeting
April 22 Regular Meeting	Published April 25	72 hours following the meeting
May 6 Regular Meeting	Published May 7	24 hours following the meeting
May 27 Regular Meeting	Published May 28	24 hours following the meeting
June 10 Regular Meeting	Published June 11	24 hours following the meeting
June 24 Regular Meeting	Published June 25	24 hours following the meeting
July 29 Regular Meeting	Published July 30	24 hours following the meeting
August 26 Regular Meeting	Published August 29	72 hours following the meeting
September 9 Regular Meeting	Published September 11	48 hours following the meeting

Accordingly, the Township is often meeting, and sometimes exceeding, the delegate's suggestion that minutes should be published "preferably 10 days prior TO", as minutes are typically published two weeks or more prior to the next meeting.

Part 3 Roles and Duties: Subsection 3.3 – Duty of Members

Procedural By-law Text:

3.3 Duty of Members

Notwithstanding the provisions of the Municipal Act, 2001, it is the duty of Members to attend all Meetings of which they are a Member and to:

- (i) Prepare for Meetings, including reviewing the Agenda and associated materials provided prior to the Meeting;*
- (ii) Speak only to the subject under debate at Meetings;*
- (iii) Vote on all Motions before the Council/Committee unless prohibited from voting by law as appropriate;*
- (iv) Observe proper procedure and decorum at all Meetings;*

- (v) State questions or requests for information through the Mayor/Chair; and,
- (vi) Act in accordance with their Declaration of Office as appropriate

Issue identified by Delegate:

- (i) Prepare for Meetings, including reviewing the Agenda and associated materials provided prior to the Meeting. **This preparation may include consultations with professional members of the Corporation's staff for any required clarification of terms' and concepts' meanings, financial and other implications of agenda items, and with constituents for input as deemed appropriate by the member.**

Results of Municipal Scan and Analysis:

With respect to the Duties of Members, the municipal scan, appended as Attachment 5, reveals that subsection 3.3.(i). of the Township of Wilmot Procedural By-law is consistent with that of other municipalities.

The purpose of a Procedural By-laws is to guide Council in effective and efficient decision-making during meetings. While the Duty of Members section outlines at a high level the duties of members during meetings, it is not meant to be prescriptive of what a member may or may not do in their preparation for a meeting. It is the duty of a Member of Council to conduct themselves as they see fit, and likewise prepare for meetings in a manner they deem appropriate. Section 3.3. is meant to provide members with a general understanding of their responsibilities while attending meetings.

The *Municipal Act, 2001*, (the Act) provides two relevant sections for this analysis.

Section 238 (2) states:

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for **governing the calling, place and proceedings of meetings**. 2001, c. 25, s. 238 (2). [emphasis added]

Section 224 states:

224 It is the role of council,

(a) to represent the public and to consider the well-being and interests of the municipality;

(b) to develop and evaluate the policies and programs of the municipality;

(c) to determine which services the municipality provides;

(d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;

(d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;

(e) to maintain the financial integrity of the municipality; and

(f) to carry out the duties of council under this or any other Act. 2001, c. 25, s. 224; 2006, c. 32, Sched. A, s. 99.

Part 4 Meetings: Subsection 4.3 – Seating arrangement of Council

Procedural By-law Text:

4.3 Seating Arrangement of Council

Councillors will be seated to the left of the Mayor in the Council Chambers in Ward Number order. For wards with more than one Councillor, those Members will be seated in alphabetical order by last name.

Issue identified by Delegate:

4.3 (page 19) **Seating Arrangement in Council Chamber**

(i) Councillors will be seated to the left of the Mayor in the Council Chambers in Ward Number order. For wards with more than one Councillor, those Members will be seated in alphabetical order by last name.

(ii) The Clerk will be seated to the immediate left of the Mayor, between the Mayor and the Ward One councillor. (A position mandated by the OMA)

(iii) The Chief Financial Officer will be seated to the immediate right of the Mayor. (A position mandated by the OMA)

(iv) The Fire Chief will be seated to the immediate right of the CFO.

(v) Any other officers or Department Directors that may be hired by the will of Council (per the OMA), will be seated to the right of the Fire Chief.

(This includes all Department Directors, and a CAO, as all these positions are optional per the OMA)

Results of Municipal Scan and Analysis:

With respect to the Seating Arrangement, the municipal scan, appended as Attachment 6, reveals that the Township of Wilmot is consistent with other municipalities. No municipality surveyed outlines the staff seating in Council or associates the seating arrangement with the statutory roles of the *Municipal Act, 2001*.

The *Municipal Act, 2001*, does not dictate the seating arrangements within a Council Chamber, and no such example could be identified in Ontario. The current arrangement in the Township of Wilmot Council Chambers reflect a very common practice among municipalities across Ontario.

Part 4 Meetings: Subsection 4.6 – Staff and members of the public – addressingProcedural By-law Text:*4.6 Staff and Members of the Public – Addressing*

Staff and members of the public are to be addressed as “Dr.”, “Mr.”, “Mrs.”, “Ms.”, “Miss.”, “Mx.”, or “Ind.” (surname inserted) or by their first name as indicated by the individual. Members of staff may also be addressed by title within the corporate structure.

Issue identified by Delegate:

What do the terms “Mx.”, or “Ind.” Mean? Do we have a choice of referring to anyone by the label of our choice, or will their identification be placed on their name tag?

Analysis:

As defined by the Merriam-Webster Dictionary, the term “Mx” “is used as a title for those who do not identify as being of a particular gender, or for people who simply don't want to be identified by gender”. Likewise, the term “Ind.” Refers to “individual” to not designate a gender to an individual.

In support of creating an inclusive and respectful environment, any member of Council, staff or the public participating at a Council meeting may advise the Chair or the Clerk of the term they would like used when being addressed.

Part 4 Meetings: Subsection 4.7.2 – Inaugural meeting of CouncilProcedural By-law Text:

4.7.2 The Agenda for the Inaugural Meeting will be established by the Mayor, CAO and the Clerk, and will reflect the values of the community with respect for diversity and inclusion of all members of the community.

Issue identified by Delegate:

*4.7.2 (page 19) The Agenda for the Inaugural Meeting will be established by the Mayor, CAO and the Clerk... **I hope this means that no formal “business” will occur at this meeting because the elected Councillors have had no input.***

Results of Municipal Scan and Analysis:

With respect to the Inaugural Meeting of Council, the municipal scan, appended as Attachment 7, reveals that the Township of Wilmot is consistent with other municipalities. Four of the municipal by-laws reviewed contain the same language as Wilmot and three of the municipalities prohibit any business from occurring at the inaugural meeting. The remaining by-laws reviewed were silent on this point.

Section 4.7.3 states

No business will be conducted at the Inaugural Meeting of Council until the Declarations of Office have been signed by the majority of the Members of Council.

In keeping with Section 4.7.3. if there were any time sensitive items that required Council's consideration, those items would appear on the first agenda following the Declarations of Office. In such a situation, the Chief Administrative Officer and the Clerk would work with the Mayor-Elect on the agenda and its contents.

With this said, the inaugural meeting is very much a ceremonial meeting. From a practical standpoint, where possible, efforts would be made to hold items until the next Regular or Special Council Meeting as a normal course of action. Generally speaking, the first meeting following an inauguration occurs within a week or two of a new term.

Part 4 Meetings: Subsection 4.10 – Regular Meetings of Council – Election Year

Procedural By-law Text:

*4.10 Regular Meetings of Council – Election Year
During the year of a regular election, there will be no scheduled Council Meetings for the month of September and October.*

Issue identified by Delegate:

*4.10 Regular Meetings of Council – Election Year
(i) During the year of a regular election, there will be no scheduled Council Meetings for the month(s) (sic) of September and October.
(ii) During the "Lame Duck" period between when an election is called and a new Council elected and seated, there will be no actions nor expenditures taken by any employee of the Township Corporation that have not been specifically authorized by the previous Council **PRIOR TO THE LAME DUCK PERIOD.***

Results of Municipal Scan and Analysis:

With respect to reference to the restrictions under Section 275 of the *Municipal Act, 2001*, the municipal scan, appended as Attachment 8, reveals that the Township of Wilmot is consistent with the overwhelming majority of other municipalities. Only one municipality reviewed (Town of Collingwood) notes the "lame duck" restrictions under Section 275.

Again, the purpose of Procedural By-laws is to guide Council in effective and efficient decision-making during meetings. The *Municipal Act, 2001*, is the provincial legislation that addresses the restrictions of Council during an election period. It is not a best practice for Procedural By-laws to regurgitate information outlined in legislation.

Section 275 of the Act acknowledges two potential periods where restrictions may be imposed on the authority to of a Council to take action. The “lame duck provisions” of the Act, specifically provides the rules around decisions Council can take after nomination day and following Election Day.

The purpose of Section 4.10 is not to govern the acts that Council may take during an election year. The purpose of Section 4.10 is to advise that Council will not be schedule to meet during the months of September and October. This is because the resources within Legislative Services are fully dedicated to the execution of the municipal and school board elections during those months.

Part 4 Meetings: Subsection 4.15 – Regular Meeting – late additions

Procedural By-law Text:

4.15 Regular Meetings – Late Additions

4.15.1 Late addition reports, associated materials, and By-laws for an already-published Agenda must be approved by the Chief Administrative Officer in the case of Council Meetings or the Department Head responsible for the Committee in the case of Committee Meetings; and must be submitted in writing to the Clerk/Committee Administrator not later than 4 (four) hours in advance of the Meeting.

4.15.2 Only reports and associated materials or By-laws that are time sensitive or deemed necessary by the Chief Administrative Officer for Council Meetings, or Department Head responsible for the Committee, to be included on an Agenda that is already published will be accepted as late additions to the Agenda.

Issue identified by Delegate:

4.15 (page 21) Regular Meetings – Late Additions

4.15.1 (page 21) Late addition reports, associated materials, and By-laws for an already-published Agenda must be approved by the ~~Chief Administrative Officer~~ **Mayor, after consultation with the CAO** for Council Meetings, or Department Head responsible for the committee in the case of Committee Meetings; and must be submitted in writing to the Clerk/Committee Administrator, **Councillors and the CAO** not later than 4 (four) hours in advance of the Meeting.

4.15.2 (page 21) Only reports and associated materials or By-laws that are time sensitive or deemed necessary by the **Mayor, after consultation with the** Chief Administrative Officer for Council Meetings, or Department Head responsible for the Committee, to be included on an agenda that is already published will be accepted as late additions to the Agenda.

Results of Municipal Scan and Analysis:

With respect to reference to late additions to the agenda, the municipal scan, appended as Attachment 9, reveals that the Township of Wilmot is consistent with other municipalities. In fact, where the municipalities surveyed do make mention of late additions, most leave the decision making to the Clerk and Chief Administrative Officer.

Part 4 Meetings: Subsection 4.23 – Consent agenda – Council

Procedural By-law Text:

4.23.1 In preparing the Agenda for Council Meetings, the Chief Administrative Officer or the Clerk, may identify items to place under the heading “Consent Agenda”.

4.23.6 The Consent Agenda may include reports of a general nature, but is not limited to the following routine items:

- (i) Meeting Minutes, other than those of Open Regular or Special, or Closed Session Council Meetings;*
- (ii) Staff appointments;*
- (iii) Committee appointments;*
- (iv) Legislative reports by statutory officers of the municipality;*
- (v) Reports provided for information only; and,*
- (vi) Awards of tenders.*

Issue identified by Delegate:

*4.23.1 (page 25) In preparing the Agenda for Council Meetings, **the Mayor, Councillors, the Clerk, the Chief Financial Officer or the Chief Administrative officer** may identify items to place under the heading “Consent Agenda”. (NOTE: 4.23.5 allows Councillors to remove an item from the Agenda, but NOT TO ADD an item in the first place. The Agenda belongs to the Corporation’s elected Council – the CEO and Executive Board-, not hired Administrators.) The first step in representing the will of the shareholders (tax payers) is to control the Agenda, what gets discussed.*

4.23.6 (page 25) The Consent Agenda may include reports of a general nature, but is not limited to the following routine items:

*This is bureaucratic speak for sure. “**may**” include (sic), but maybe not. “**but is not limited to the following routine items**” Which means the CAO could put on the Consent agenda anything he/she/Mx/Ind wanted. Thus, the time period for Council meetings is already dominated by the CAO’s office. Let me repeat, **The Agenda belongs to the Corporation’s elected Council – the CEO and Executive Board- not hired Administrators.***

Results of Municipal Scan and Analysis:

With respect to consent agenda approvals and what qualifies as a consent item, the municipal scan, appended as Attachment 10, reveals that the Township of Wilmot is consistent with other municipalities. The municipal scan demonstrates that in municipalities that use consent

agendas, the Clerk is delegated the administrative decision-making authority to designate items for the consent agenda.

The purpose of Section 4.23.1 is to provide direction on how agenda items are deemed to be consent items. Consent items “means the grouping of routine, non-controversial business/reports into a single agenda item on a Council/Committee agenda that do not require debate. Consent items can be approved in one action rather than voting on each item separately unless a Member requests that a Consent item be dealt with separately.”

Council has provided general guidance/direction on what may constitute consent agenda items. While the delegate refers to section 4.23.6 as “bureaucratic speak” for “may include”, the fact is that it is impossible to develop an exhaustive list of possible consent items that may come forward at Council. As such, Council has previously agreed upon a list of potential items that would be deemed appropriate to deal with as Consent items. Likewise, Council has delegated to the Clerk the administrative duty of preparing the Council agenda and ensuring reports appear under the appropriate headings on such agenda.

It is also important to refer to Section 4.23.3 that states, “Any Member of Council or staff member may, before the Consent Agenda is voted on, add to or remove items from the Consent Agenda to be dealt with separately. Any item removed from the Consent Agenda will be disposed of immediately following the Consent Agenda.” As Council is aware, it is not uncommon for items to move from Consent to Reports on an agenda if Council anticipates the need for further debate and discussion on the matter.

Certainly, nothing precludes a member of Council from introducing a Notice of Motion directing Township staff from preparing a report (consent or otherwise) for inclusion on a future Council Agenda.

For additional clarification of terminology and governance, the municipality has an elected Council, not a “Executive Board”. There is no reference in the *Municipal Act, 2001*, to an “Executive Board”.

Part 5 Closed Meetings: Subsection 5.3.2 – Attendance in Closed Meetings and Disclosure of Materials

Procedural By-law Text:

5.3.2 The Clerk will attend all Closed Meetings of Council. Where the CAO has determined it is not appropriate for the Clerk to be in attendance for an item, the Clerk must delegate their authority in writing and in advance of the Meeting to the CAO or other as authorized by the CAO.

Issue identified by Delegate:

5.3.2 (page 28) The Clerk, **and CFO as appropriate**, will attend all Closed Meetings of Council. ~~Where the CAO has determined it is not appropriate for the Clerk to be in~~

~~attendance for an item, the Clerk must delegate their authority in writing and in advance of the Meeting to the CAO or other as authorized by the CAO.~~

THIS IS BOGUS!!! and an affront to the OMA which specifically requires the existence of a Clerk. The Clerk does not have to be an employee of the corporation, but a Clerk MUST exist. The Clerk is trained in all aspects of Municipal government and an official record of ALL PROCEEDINGS must be kept by the Clerk. The OMA provides for the Clerk to delegate their powers and duties to any person, but it does not specify the recipient of the authority must be the CAO. For the CAO to “determine that it is not appropriate for the Clerk to attend”, and then also grant those powers and duties onto themselves is a blatant conflict of interest, a potential source of undue influence, and probable abuse of authority as an administrator, not being a corporate executive body member (CEO and Executive Board). The OMA specifies that a Chief Administrative Officer, “MAY” be hired by a Municipal corporation, but it is NOT a requirement, it is an OPTIONAL POSITION.

It is not legislated that a CAO exist in the first place, nor that it is essential that a CAO attend any or all meetings of the corporation. HOWEVER, IT IS LEGISLATED AND ESSENTIAL FOR “DUE PROCESS” OF THE CORPORATION’S BUSINESS THAT A RECORD BE CREATED, MAINTAINED AND PUBLISHED BY THE CLERK.

If a CAO dictates that the Clerk cannot be present, then there is no official record. The CAO cannot be permitted to arbitrarily assume the powers and duties of the Clerk onto themselves. We do not have self-anointed Kings, nor do we have self-appointed Clerk’s. It’s “wrong”!

Clauses 5.7.1 and 5.7.3, for examples, preclude the removal of the Clerk from a Closed Meeting. 5.2.3 is in contradiction of those stated needs of the Senior Executive Team (Mayor and Council).

THERE IS NO WAY ON THIS GREEN EARTH THAT THIS CLAUSE CAN BE ALLOWED TO BE INCLUDED. THIS HAS ALL THE POTENTIAL FOR AN ARBITRARY ASSUMPTION OF POWER AND AUTHORITY TO ANY CAO WHO WANTS TO CONTROL A MEETING BY WHIM! THIS IS SHOCKING IN THE EXTREME!

I can’t make this point any bigger or any louder. Don’t do this!!!!!! Eliminate the second sentence entirely!

Results of Municipal Scan and Analysis:

With respect to attendance in closed meetings and disclosure of materials, the municipal scan, appended as Attachment 11, reveals that the Township of Wilmot is consistent with other municipalities. The municipal scan demonstrates that the Clerk or designate may attend closed sessions to record without note or comment all resolutions, decisions and other proceedings at a meeting of the body.

Section 239 (7) and (8) of the *Municipal Act, 2001*, mandates that a Clerk be present during a closed meeting of Council to “record without note or comment all resolutions, decisions and other proceedings at a meeting of the body”. This means that either a Clerk or a Deputy Clerk must be present for closed meetings of Council (likewise, the same rules apply for open meetings of Council).

In 2022, Council, by By-law, appointed the Chief Administrative Officer as a Deputy Clerk for the Township, in accordance with section 228(2) of the *Municipal Act, 2001*. That By-law was subsequently (and inadvertently) repealed when the appointment of the current Deputy Clerk was made. Nonetheless, under section 228 (4) of the *Municipal Act, 2001*, “The clerk may delegate in writing to any person, other than a member of council, any of the clerk’s powers and duties under this and any other Act”.

It is not uncommon for a Council to appoint its Chief Administrative Officer as a Deputy Clerk, or for the Clerk to delegate their powers under the *Municipal Act* to the Chief Administrative Officer from time to time. Generally speaking, such appointment/delegation enables Council to have confidential discussions with the Chief Administrative Officer in a closed session relating to matters that would not be appropriate to have with the Clerk present. Often such items are human resources related and often related the performance of the Chief Administrative Officer, the Clerk, or the supervisor of the Clerk (if one exists).

Any person delegated or appointed as a Clerk or Deputy Clerk is responsible for ensuring the statutory responsibility outlined under Section 228 (1) of the *Municipal Act, 2001*, are met, including the recording, without note or comment, all resolutions, decisions and other proceedings of Council.

A minor amendment could be made to change the wording in Section 5.3.2 to read: “The Clerk will attend all Closed Meetings of Council. Where the CAO has determined it is not appropriate for the Clerk to be in attendance for an item, the Clerk **may** ~~must~~ delegate their authority in writing and in advance of the Meeting to the CAO or other as authorized by the CAO.”

While not urgently required, such an amendment outlined above could be incorporated in a future by-law update, should Council deem the amendment necessary.

Part 5 Closed Meetings: Subsection 5.7 – Closed Meeting Agendas

Procedural By-law Text:

5.7.1 Agendas for Closed Meetings will be circulated to Members no later than 3 (three) Business Days before the holding of the Meeting. If Closed Meeting Agendas and reports are circulated by hardcopy, the Clerk/Committee Administrator will collect all the materials for destruction at the adjournment of the Closed Meeting.

5.7.3 In preparing the Agenda, the Clerk/Committee Administrator will identify the most amount of detail possible to allow for Members to consult with the Integrity Commissioner with respect to identifying a potential conflict of interest

Issue identified by Delegate:

5.7.1...(page 29) If Closed Meeting Agendas and reports are circulated by hardcopy, the Clerk/Committee Administrator will collect all the materials for destruction at the adjournment of the Closed Meeting.

*This is, perhaps, an oxymoron – saying one thing which is the opposite of the other. In 5.2.3, above, the CAO can arbitrarily remove the Clerk from keeping a legally required record at a meeting, but in 5.7.1, it is required that the absent official, the Clerk, must collect and dispose of any materials distributed. **5.2.3 has to be amended by elimination of the second sentence entirely.***

*5.7.3 (page 29) In preparing the Agenda, the Clerk/Committee Administrator will identify the most amount of detail possible to allow for Members to consult with the Integrity Commissioner with respect to identifying a potential conflict of interest. **The Clerk has a role in conjunction with the integrity commissioner, but is not allowed into the meeting? 5.2.3 as written is, if not stupidity, then counter-intuitive!***

Analysis:

With respect to 5.7.1, please refer to the analysis under Part 5 Closed Meetings: Subsection 5.3.2 – Attendance in Closed Meetings and Disclosure of Materials which explains, any person delegated or appointed as a Clerk or Deputy Clerk is responsible for ensuring the statutory responsibility outlined under Section 228 (1) of the *Municipal Act, 2001*, are met, including the recording, without note or comment, all resolutions, decisions and other proceedings of Council. As such, any person serving as a Clerk or a Deputy Clerk for a closed meeting has the responsibility to collect all the materials for destruction at the adjournment of the Closed Meeting.

Similarly, in response to the concerns raised for 5.7.3, any person delegated or appointed as a Clerk or Deputy Clerk is responsible for identifying the most amount of detail possible, to allow for Members to consult with the Integrity Commissioner with respect to identifying a potential conflict of interest.

Part 5 Closed Meetings: Subsection 5.8 – Closed Meeting Minutes

Procedural By-law Text:

5.8.1 Minutes of all or part of a Closed Meeting will be recorded by the Clerk/Committee Administrator, approved by the Members at the following Open Meeting of Council/Committee as appropriate, and will be retained in confidence by the Clerk/Committee Administrator and such Minutes will not be open to inspection by any member of the public unless the Majority of the Members waive privilege or as required by law or court proceeding

5.8.2 Minutes of all or part of a Closed Meeting will only be made available to the whole of the Members and the Chief Administrative Officer, and those staff or their designate who were in attendance for their individual item. Minutes of Closed Meetings may be disclosed to new Township staff at the written approval and direction of the Chief Administrative Officer.

Issue identified by Delegate:

5.8.1 (page 30) Minutes of all or part of a Closed Meeting will be recorded by the Clerk, subsequently approved in open session, and then retained. **BUT, 5.2.3 says the CAO can kick the Clerk out? 5.23. as written is, if not stupidity, then counter-intuitive!**

5.8.2 (page 30) Minutes of all or part of a Closed Meeting will only be made available to the whole of the Members, **the Clerk**, the Chief Administrative Officer, and those staff or their designate who were in attendance for their individual item. **Minutes of Closed Meetings may be open to inspection by any member of the public subject to the conditions specified in 5.8.1.** Minutes of Closed Meetings may be disclosed to new Township staff at the written approval and direction of the ~~Chief Executive Officer~~, **Mayor, after consultation with the Chief Administrative Officer.**

The wording in separate clauses contradicts the wording in another. A legal document, such as a By-law must have cohesion, and logical integrity. This version DOES NOT HAVE EITHER!

Analysis:

With respect to 5.8.1, please refer to the analysis under Part 5 Closed Meetings: Subsection 5.3.2 – Attendance in Closed Meetings and Disclosure of Materials, and Subsection 6.1. – General Provisions.

With respect to the concerns raised for section 5.8.2, in accordance with the *Municipal Act, 2001*, and the *Municipal Freedom of Information and Protection of Privacy Act, 1990* the minutes of Closed Sessions are not disclosed publicly. It could be suggested with a high degree of confidence, that it is not common practice for a municipality to make the minutes of their closed sessions available for public inspection. Logically, making the minutes of a closed session public would negate the need for a closed session.

It is a common practice for the Chief Administrative Officer to approve the disclosure of minutes to staff, on a need-to-know basis, to conduct the business of the municipality.

Procedural By-law Text:

6.1.3 *The Clerk or the Chief Administrative Officer reserves the right to determine what is acceptable or unacceptable materials as per Sections 6.2 and 6.3.*

6.2.2 *Any person making a Presentation to Council/Committee in accordance with Section 6.2 are subject to the following provisions:*

(i) Must have received prior approval by the Chief Administrative Officer or Clerk to appear before Council or Department Head to appear before a Committee;

Issue identified by Delegate:

6.1.3 (page 31) *The Clerk or the Chief Administrative Officer reserves the right to determine what is acceptable or unacceptable materials per Sections 6.2 and 6.3. **The***

Clerk is trained to know what is legally acceptable. A CAO is trained in administration (or simply hired out of a clerical pool at the will of Council) and is not an authorized “judge” of materials. A CAO often has a vested interest in agenda items proceeding along a path which is deemed appropriate by that CAO. There is a strong potential for bias to enter into an CAO’s arbitrary decision about which facts, evidence are “presentable” for the Council and shareholders (public) to receive. This may be evidenced when a CAO includes as recommendations in a report, those items or directions that the CAO prefers or assumes from previous Councils, but does not include recommendations that reflect the direction given to the Council by the corporation’s shareholders during an intervening election, and as reflected in discussions and delegations at Council meetings. This may be considered as mis-direction by omission, rather than manipulation by commission, but it could be, in effect, both. “He who controls access to information, controls knowledge. He who controls knowledge controls power.” THE CAO IS AN OPTIONAL POSITION UNDER THE OMA FOR A REASON. CAOs are administrators, not arbitrators of “acceptable” or “unacceptable” materials which may advocate for an outcome different than that preferred by an administrator. This has all the potential for intellectual censorship by a CAO. The Clerk, only, needs to be the independent arbitrator.

6.2.2 (i) (page 31) Must have received prior approval by the Mayor ~~Chief Administrative Officer~~ or Clerk to appear before Council or Department Head to appear before a Committee;

6.2.2 (ii) (page 32) *confirms the role of the Clerk and Department Head and eliminated the CAO as is appropriate.*

Analysis:

Section 6.1.3. as written is appropriate and is helpful to have situations where the Clerk is determining whether the matter relates to any of the following conditions outlined under 6.5.1 of the by-law:

- is eligible for resolution under any process for formal complaints or appeals, or for requesting compensation, where such processes have been established by the Township of Wilmot, unless and until all municipal proceedings of such a process have been completed;
- is related to an employment matter;
- is undergoing judicial or court process or litigation to which the delegation is a party to the proceeding;
- has already been the subject of consideration by Council, if a decision on the matter by Council was reached within the last six months.

Operationally, the Clerk has the authority to make these decisions independently and without any consultation of the Chief Administrative Officer. However, there may be judicial and court processes underway that the Clerk is unaware and consults the Chief Administrative Officer for clarity and direction.

Part 6 Presentations, Delegations and Written Submissions: Subsection 6.4. – General Interest Delegations

Procedural By-law Text:

6.4.1 General Interest Delegations may register to speak to matters that are of a general interest of the Township of Wilmot.

6.4.4 The Clerk shall have the authority to determine if the subject matter does in fact relate specifically to a matter contained in the Regular Council Meeting Agenda for purposes of allowing or denying the Delegation and the Clerk will introduce such Delegation Request Form(s) at the time of adopting the Published Agenda.

Issue identified by Delegate:

*6.4.1 General Interest Delegations may register to speak to matters that are of general interest **in** the Township of Wilmot.*

*6.4.4 (page 33) The Clerk shall have the authority to determine if the subject matter does in fact relate specifically to a matter contained in the Regular Meeting Agenda for purposes of allowing or denying the Delegation and the Clerk will introduce such Delegation Request Form(s) at the time of adopting the Published Agenda. **Here we go again. If it's not on the Agenda, and presently the Agenda is controlled by the CAO's office, then one cannot delegate on a topic within the jurisdiction of Council.***

Analysis:

Please refer to Report COR-2024-36 (Attachment 4) for background information on this section and municipal best practices.

Part 6 Presentations, Delegations and Written Submissions: Subsection 6.6. – Written Submissions

Procedural By-law Text:

6.6.1 Members of the public may submit Written Comments regarding any item on the Agenda that is not listed as a Public Meeting item, subject to the following:

- (i) Will be attached to the Agenda if received not less than five (5) Business Days before the date of the Meeting;
- (ii) Will not be attached to the Agenda but will be attached to the Minutes if received less than five (5) Business Days, but not less than four (4) hours prior to the commencement of the Meeting;
- (iii) Will be rejected if contains profanity, hate speech, pornography, or content of a violent and/or sexual nature; and,
- (iv) Will be returned to the submitter to remove inappropriate content such as negative allegations or comments towards members of the public, and/or criticisms of a personal

nature against any Member or staff, and/or personal information about identifiable individuals as per the Municipal Freedom of Information and Protection of Privacy Act and must be resubmitted before the commencement of the Meeting to be attached to the Minutes.

6.6.2 Members of the public may submit Written Comments regarding any Public Meeting item listed on the Council Agenda, subject to the following:

- (i) Will be included as part of the Staff Report for the Council Agenda if received by the due date stipulated in the Notice of Public Meeting circulated to affected property owners;
- (ii) Will be included in a subsequent Staff Report, if any, for the Council Agenda if not received in time for the Staff Report as per Section 6.4.2 (i); and,
- (iii) Will not be accepted once Council has made a decision on the item.

Issue identified by Delegate:

6.6.1 Members of the public may submit Written Comments regarding any item on the Agenda that is not listed as a Public Meeting item, subject to the following.

What does this mean?

The public can submit written documents regarding any item on the Agenda BUT IS NOT LISTED AS A PUBLIC MEETING ITEM. What's the difference between an Agenda item and a Public Meeting item?

This section 6 changes nothing from present practice. Regardless of what format one chooses, presentation, delegation, etc. etc. the item must be on the Meeting's Agenda. There is provision in this proposed By-law for an agenda to be amended with 4 hours' notice, but a shareholder (Public) must submit all their thoughts, in writing, with attachments, 5 Business Days prior to a Meeting.

This shareholder's conclusion is that a bureaucrat has produced another 58 pages of ways to restrict or prevent Wilmot citizen's from being heard.

This document, as presented, contains inconsistencies and contradictory items. Bureaucrats love inconsistencies, because they can latch on whichever one they want to back up a position on a matter – regardless of whether an contradictory statement is elsewhere in the same document.

Analysis:

The public is welcome to submit written comments on any matter on the agenda. The distinction between agenda items and a Public Meeting item is how the correspondence is handled.

Written submissions submitted on an agenda item, are included in the agenda package under Correspondence. Such submissions can be included on the agenda if received prior to publishing the agenda package, included in addendum or “amended” agenda

packages (generally published the Friday prior to the meeting) and can be circulated electronically to Council and added to the minutes (to form part of the public record) if received the day of the meeting. The delegate themselves has submitted comments that have both appeared on the published agenda and have been included in the minutes.

While the delegate speaks to section 6.6.1., section 6.6.2. address the handing of Public Meeting items. Specially, the Procedural By-law outlines that:

Members of the public may submit Written Comments regarding any Public Meeting item listed on the Council Agenda, subject to the following:

(i) Will be included as part of the Staff Report for the Council Agenda if received by the due date stipulated in the Notice of Public Meeting circulated to affected property owners;

(ii) Will be included in a subsequent Staff Report, if any, for the Council Agenda if not received in time for the Staff Report as per Section 6.4.2 (i); and,

(iii) Will not be accepted once Council has made a decision on the item.

Public meeting items refers to any portion of a Meeting of Council/Committee which is subject to the requisite advanced public notice requirements and has been given authority by By-law or statute to conduct a Meeting in matters pursuant to any legislation which requires Council/Committee to afford interested parties to be heard before taking action, passing a By-law or making a decision. For instance, public meetings may be held under the *Planning Act, 1990* to consider planning applications.

ALIGNMENT WITH THE TOWNSHIP OF WILMOT STRATEGIC PLAN:

Reviewing the Procedural By-law is in alignment with the Responsible Government strategic goal.

FINANCIAL CONSIDERATIONS:

There are no direct financial impacts relating to this report.

ATTACHMENTS:

Attachment 1 – Report COR-2023-54 dated September 11, 2023 (without attachments)

Attachment 2 – Procedural By-law 2024-42 adopted August 26, 2024

Attachment 3 – Report COR-2024-36 dated July 29, 2024 (without attachments)

Attachment 4 – Municipal Scan relating to the publishing of Minutes

Attachment 5 – Municipal Scan relating to the duties of Members

Attachment 6 – Municipal Scan relating to the seating arrangement of Council

Attachment 7 – Municipal Scan relating to business at Inaugural Meeting of Council

Attachment 8 – Municipal Scan relating to mention of restrictions resulting from Section 275 (MA)

Attachment 9 – Municipal Scan relating to approval of late additions on agendas

Attachment 10 – Municipal Scan relating to approval of consent agendas
Attachment 11 – Municipal Scan relating to attendance at closed meetings