

## **REPORT**

### ***Office of the Chief Administrative Officer***

<b>To:</b>	Mayor Johnstone and Members of Council	<b>Date:</b>	February 13, 2023
<b>From:</b>	Lisa Spitale Chief Administrative Officer	<b>File:</b>	01.0110.20-05
		<b>Item #:</b>	2023-78
<b>Subject:</b>	<b>Notice of Motion Process</b>		

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#### **RECOMMENDATION**

THAT Council adopt the Notice of Motion Process Policy in attachment 1 and give first, second and third reading to Council Procedure Bylaw Amendment Bylaw No. 8385, 2023 in attachment 2.

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#### **PURPOSE**

To respond to Council's motion on January 30th and provide Council with a defined mechanism to handle Notice of Motions being placed on the agenda.

#### **BACKGROUND**

On January 30<sup>th</sup> Council passed the following resolution

*"THAT Council direct staff to report back on the apparent discrepancy between how the Council Procedure Bylaw No. 6910, 2004 was and is being interpreted and applied in the present, notably at the November 28, 2022 Council meeting with respect to Notice of Motion, and how the Bylaw was interpreted and applied by previous Councils in order to clarify the situation and determine what the correct procedure is, and*

*FURTHER THAT staff report back at the February 13th Council meeting with recommendations to improve Section 21 of the Council Procedures Bylaw 6910 to ensure it no longer lacks clarity and is less subject to interpretation;"*

## **Procedure Bylaw**

The procedure bylaw addresses notices of motion in section 21 stating:

*“Any member has the right to give notice to Council of a motion which that member intends to make at the next meeting of the Council. The City Clerk shall make note of the motion and place it on the next agenda. The City Clerk may request that the member provide the motion that is subject of the notice in writing.”*

## **DISCUSSION**

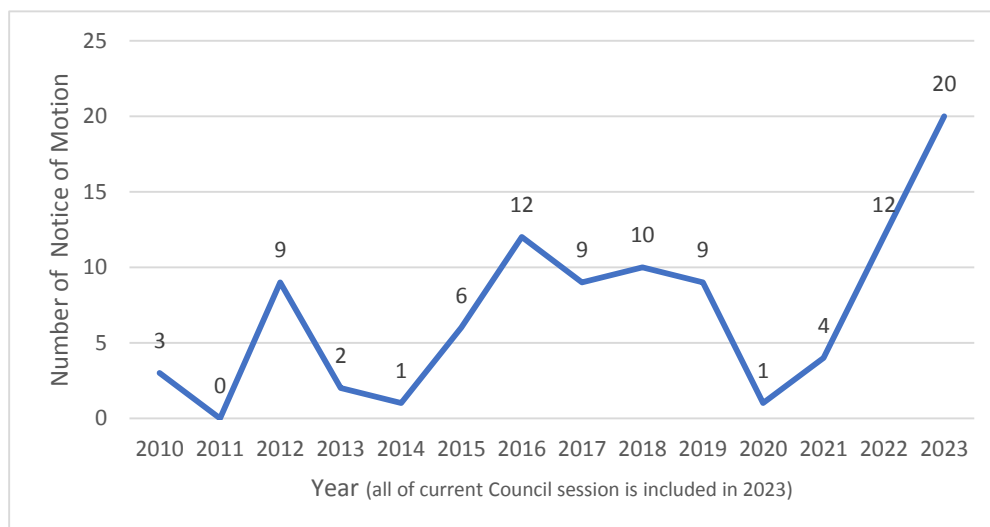
### **Previous Practice**

In previous Council terms, the usual practice for handling a Notice of Motion consisted of the introduction the Notice of Motion at the first meeting and then debate of the actual motion contained in the Notice of Motion at the following subsequent meeting. The Notice of Motion only contained the motion to be considered.

Prior to 2014, recitals were generally not included with the motion set out in Notice of Motion. With the change of Mayor and Council starting in the fall of 2014, there was a change to the process regarding a Notice of Motion. The Mayor directed staff in this change. The Mayor would work with the Councillor to prepare the Notice of Motion in advance of its submission to the City Clerk. This assistance helped to ensure that potential issues concerning the subject matter were addressed.

In late 2018, there was a need to review Notices of Motion upon the passing of the Council Code of Conduct. The City Clerk provided advice and suggestions to improve the notice of motion. Once the Notice of Motion was submitted it was debated at the first Council meeting that it was presented at. Notices of motion were relatively infrequent.

Graph 1 Notices of Motion by Year



Graph 1 shows the number of notices of motions on the Council agenda during the time frame 2010 – 2023. Previously, given the sporadic frequency of Notices of Motions on the Council agendas, a detailed process was not needed.

At the beginning of the present term, the new Mayor informed the City Clerk that the process for notices of motion would return to the former model, in alignment with the Procedure Bylaw as this provided Council and staff time to consider the motion before it was debated by Council.

### **Recommendations to Improve Section 21 of the Procedure Bylaw**

The increased frequency of Notice of Motions and Council's resolution require clarity in the Notice of Motion process. A revision to the Procedure Bylaw is recommended. This approach will provide a clear policy on the creation and processing of Notices of Motion.

Notices of Motion are an effective tool in parliamentary procedure. However, notice of motions can become administratively challenging if there are few process parameters.

In preparation for this report, staff reviewed the City of Nanaimo's Notice of Motion practices, the Ministry of Municipal Affairs – Procedure Bylaw Guide, and the Union of British Columbia Municipalities resolution guide. From this research, staff has developed a comprehensive policy that addresses a variety of aspects of the process for handling Notices of Motion. The proposed Policy is contained in Attachment 1.

The proposed Notice of Motion Process Policy is to apply to Notices of Motion whether they are considered in an open meeting or in a closed meeting.

To assist in the development of Notices of Motions, the proposed Policy articulates the content and structure for the Notice of Motion in **Part 1**. The identification of whether the Notice of Motion is to be considered in an open meeting or in a closed meeting will assist Legislative Services in appropriately handling the Notice of Motion. The indication of whether the subject matter in the Notice of Motion adheres to Strategic Plans will assist Council to determine how the proposed motion fits within the City's/Council's goals.

The use of recitals (the "Whereas" statement) is optional. The structure and the content pertaining to the recitals within the Notice of Motion follows the approach which is used by the Union of BC Municipalities for its convention motions. Given that recitals, if adopted, become the official position of the City rather than merely background information about the motion, it is essential that careful consideration is given to the content of those recitals to avoid potential positions which are not intended or which could be construed as a liability<sup>1</sup>. If a Member of Council is of the opinion that certain background information is critical for the understanding of the subject matter, that Member of Council has the ability to provide a summary of that information. Sections 5.0 and 6.0 are there to assist the Member of Council in complying with their

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<sup>1</sup> Resolutions and bylaws have been struck down by the Courts because of the content of recitals.

responsibilities under the Code of Conduct, Respectful Workplace Policy and legislative constraints.

**Part 2** articulates what a Member of Council needs to know for submitting a Notice of Motion. Submission of the Notice of Motion to the City Clerk eight (8) business days prior to the Council meeting will ensure that there is adequate time to assess whether changes may be needed.

As Council is aware, the organization is challenged due to unprecedented staff vacancies. At this time, staff is recommending that there be a limit to the number of Notice of Motions introduced at each Council meeting to one per Council Member. The limit on the number of Notice of Motions at each meeting is designed to allow the existing staff adequate time to process the Notice of Motions within the allocated time frame.

Moreover, as Notices of Motions are not motions to be adopted at that time, there is no need for a seconder. However, if there is a seconder, the proposed Policy provides clarity as to the seconder's ability to submit more Notices of Motion. If a situation arises in that two or more Members of Council each submit a Notice of Motion on the same or similar topic, staff will work with those Members to combine their Notices of Motion so that Council only has to deal with the topic once. However, if combining the Notices of Motion is not possible, then Council will address each of those Notices of Motion in the order that those Notices of Motions were received by the City Clerk (date and time).

**Part 3** establishes how staff will handle Notice of Motions that have been submitted. While the City Clerk conducts an initial review of the Notice of Motion based on specified factors, the City Clerk is not alone in providing input on the content of the Notice of Motion. The involvement of the Mayor is a continuation of the standing practice of the City. The inclusion of the Chief Administrative Officer and the City's lawyer ensures that operational and legal concerns are taken into consideration.

**Part 4** reinforces the nature of a Notice of Motion which is to allow a Member of Council to raise an issue in a timely fashion while enabling the rest of Council to have adequate time to consider the matter before proceeding.

In order to apply the City's resources in an efficient manner, staff will only assess those motions arising out of a Notice of Motion which have been adopted by Council.

### **Modification of the Procedure Bylaw**

To ensure the proposed Notice of Motion process Policy has the authority of the bylaw, staff recommend that the amendments set out in the Procedure Bylaw No. 8385, 2023 (Attachment 2) be adopted.

The bylaw amendments set out:

- Timing and the manner in which any motion arising from a Notice of Motion will be addressed at the Council level.
- Procedural clarity for specific motions requiring staff due diligence – these motions will take effect upon the completion of certain conditions as identified by staff (financial, legal, operational, staff capacity challenges, etc.).
- Procedural clarity for other motions that arise outside of staff reports (known as motions from the floor) in order to ensure consistent treatment of motions.

### **NEXT STEPS**

If Council adopts this process Policy at the February 13<sup>th</sup>, 2023 meeting, it will become applicable for February 27<sup>th</sup>, 2023 Council and subsequent meetings.

This Policy and the bylaw amendments to the Procedure Bylaw are a starting point for addressing changes to Council meetings and other processes. Staff will be returning to Council with additional refinements for streamlining processes as laid out in the City's Delegation Bylaw.

### **INTERDEPARTMENTAL COOPERATION**

This report was reviewed by the Manager of Legal Services and the Senior Management Team.

### **OPTIONS**

Council has four options:

1. THAT Council adopt the Notice of Motion Process Policy in Attachment 1 and give first, second, and third reading to Council Procedure Bylaw Amendment Bylaw No. 8385, 2023 in Attachment 2.
2. THAT Council adopt the process of submitting Notices of Motions without recitals at one meeting and consider the submission at the next Council meeting, as was done prior to 2014.
3. THAT Council continue to operate, as established with the previous Council, by submitting Notices of Motions to the Mayor for assistance in crafting the Notice of Motion prior to submitting the Notice of Motion for inclusion at the next Council meeting, as was done from 2014 to 2022.
4. The Council provide other direction to staff.

*Staff recommends Option 1.*

### **ATTACHMENTS**

Attachment 1            Notice of Motion Process Policy  
Attachment 2            Council Procedure Bylaw Amendment Bylaw No. 8385, 2023

## **APPROVALS**

This report was prepared by:  
Lisa Zwarn, Auxiliary City Clerk

This report was reviewed by:  
Jacque Killawee, City Clerk  
Craig MacFarlane, Manager Legal Services

This report was approved by:  
Lisa Spitale, Chief Administrative Officer