

**Report to
Rapport au:**

**Community and Protective Services Committee
Comité des services communautaires et de protection
18 April 2019 / 18 avril 2019**

**and Council
et au Conseil
24 April 2019 / 24 avril 2019**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2019-EPS-GEN-0003

SUBJECT: By-law Review Framework

OBJET: Cadre d'examen des règlements municipaux

REPORT RECOMMENDATIONS

That Community and Protective Services Committee recommend that Council approve the By-law Review Framework as outlined in this report.

RECOMMANDATIONS DU RAPPORT

Que le Comité des services communautaires et de protection recommande au Conseil d'approuver le Cadre d'examen des règlements municipaux décrit dans le présent rapport.

EXECUTIVE SUMMARY

Assumptions and Analysis

On May 24, 2017, Council received an update on the By-law Review Strategy Work Plan (2014 – 2018). At that time, Council also approved the development of a comprehensive by-law review framework for future Terms of Council. The purpose of such a Framework is to:

- Provide a consistent and efficient process throughout the corporation for developing new and reviewing existing by-laws;
- Define key aspects of and set parameters for undertaking by-law reviews, such as establishing criteria to determine when a by-law should be reviewed; and
- Address issues raised during the last Term of Council, such as allowing sufficient time and capacity for unforeseen or emerging issues.

The proposed By-law Review Framework (the “Framework”) was developed by:

- Compiling a list of all by-laws in the City of Ottawa;
- Establishing an internal, cross-departmental working group to assist with the framework;
- Completing an analysis of the current City of Ottawa system and practices for by-law reviews and amendments;
- Completing municipal comparator research, both within Canada and internationally; and
- Consulting with internal stakeholders.

The Framework's objectives are to:

- Improve overall organizational effectiveness by ensuring a consistent and standardized approach corporate-wide for undertaking by-law reviews;
- Create a framework that requires a systematic review for all public-facing/regulatory by-laws; and
- Create a work plan for this term of Council that is both achievable and flexible to address emerging issues.

The Framework is comprised of nine components. These components include:

1. Application to public-facing by-laws only
2. Maximum ten-year time period
3. Departmental reviews of by-laws
4. By-law review criteria
5. By-law Review Work Plan
6. Minor Amendments Report
7. Use of consistent By-law Review Process
8. By-law Review web page
9. Continuous improvement

If approved, staff will apply the Framework to develop the By-law Review Work Plan. Furthermore, staff will develop training materials to assist with the By-law Review Process and will also implement a by-law review web page on ottawa.ca.

Financial Implications

There are no financial implications associated with this report.

Public Consultation

There were no public consultations associated with this report as it is administrative in nature. Public consultations will take place as part of individual by-law reviews, in keeping with the City's Public Engagement Strategy and past practices for by-law reviews.

An internal working group was established to develop the framework. The working group consisted of representatives from City Clerk and Solicitor, Planning, Infrastructure and Economic Development, Public Works and Environmental Services, Transportation Services and Emergency and Protective Services. Furthermore, Emergency and Protective Services staff consulted with the Business Support Services Managers, Senior Leadership and Councillors on the development of this framework.

BACKGROUND

Since the 2001 amalgamation of municipalities in Ottawa-Carleton, reviews of the City of Ottawa's by-laws have been undertaken in various ways and with different approaches. In May 2001, Council approved the By-law Harmonization Strategy which proposed the consolidation of the by-laws of the former municipalities for the new City of Ottawa. At that time, there were over 500 documented by-laws to be harmonized that were generally divided into two classes: business licensing by-laws and general regulatory by-laws. The By-law Harmonization Strategy only addressed the by-laws under the purview of the By-law and Regulatory Services branch. Other departments that are responsible for certain regulatory areas (e.g. Zoning, Traffic and Parking) have since harmonized a number of related City of Ottawa by-laws. The variety, complexity and number of existing by-laws in 2001 required a comprehensive review be undertaken to evaluate:

- the need for the existing regulation;
- the intent and background of the regulations;
- requirements of enabling legislation; and,
- best practices.

The harmonization strategy was divided into two main components, which were undertaken concurrently: harmonization and housekeeping. The harmonization methodology included a comprehensive, section-by-section review of all the by-laws and the consolidation of existing regulations, whereas housekeeping includes on-going review of and recommendation of minor amendments to existing by-laws to meet specific community needs, facilitate enforcement, meet "technical" requirements (e.g. updating penalty provisions), or address gaps in regulations that may have arisen over time. Housekeeping amendments have continued since the bulk of the harmonization exercises were completed, on an as required and priority basis.

At a special meeting on December 3, 2014, Council approved the 2014 – 2018 Governance Review report, which stated that "there was a near unanimous concern raised by Members of Council regarding the need for a comprehensive review of the

City's major by-laws and how these by-laws relate to the City's regulatory framework". Further, the report recommended that "by-laws should undergo the same sort of regular review that occurs with governance" (page 23) and that a list of all the City's major by-laws be compiled.

In 2014, to address the recommendation from the Governance Review report, and to assist in determining which by-laws require review, members of Council were asked to complete a By-law Review Survey. As part of the survey, a list of the City's by-laws that are most often referred to, along with examples of issues addressed by those by-laws, was provided with website links for additional information. Respondents were asked to identify whether their concern was related to the by-law's policy, service standards, or enforcement, and to list specific examples to clarify their concern.

On June 24, 2015, Council approved a By-law Review Strategy based on the results of the survey. By-laws to be reviewed in the 2014 – 2018 Term of Council were identified and grouped by the Standing Committee/Board that had oversight. Staff were also directed to develop a work plan for a systematic review of major by-laws in future Terms of Council.

On May 24, 2017, Council received an update on the By-law Review Strategy Work Plan (2014 – 2018). At that time, Council also approved the development of a comprehensive by-law review framework for future Terms of Council. The purpose of such a Framework is to:

- Provide a consistent and efficient process throughout the corporation for developing new and reviewing existing by-laws;
- Define key aspects of and set parameters for undertaking by-law reviews, such as establishing criteria to determine when a by-law should be reviewed; and
- Address issues raised during the last Term of Council, such as allowing sufficient time and capacity for unforeseen or emerging issues.

DISCUSSION

Following the direction of Council in 2017, a proposed By-law Review Framework (the "Framework") has been developed and is proposed by staff. The proposed Framework was developed by:

- Compiling a list of all by-laws in the City of Ottawa;

- Establishing an internal, cross-departmental working group to assist with the framework;
- Completing an analysis of the current City of Ottawa system and practices for by-law reviews and amendments;
- Completing municipal comparator research, both within Canada and internationally; and
- Consulting with internal stakeholders.

The By-law Review Framework Working Group was established and includes representatives from City Clerk and Solicitor, Planning, Infrastructure and Economic Development, Public Works and Environmental Services, Transportation Services and Emergency and Protective Services. Furthermore, Emergency and Protective Services staff consulted with the Business Support Services Managers, Senior Leadership and Councillors on the development of this framework.

Staff began by reviewing the existing process. The 2014 – 2018 Term of Council By-law Review Work Plan identified 33 by-law reviews for a four-year work plan. Of the 33 identified reviews, 20 reviews were completed. Some issues did not require a full review and therefore, were addressed through other means.

Many of the by-law reviews identified in the 2014 – 2018 Work Plan were complex in nature, such as the development of Vehicle-for-Hire and Waterpipe regulations, and the re-enactment of the Traffic and Parking By-law. These by-law reviews required extensive research, consultation, and planning, as well as an accompanying focus on implementation of the new rules/regulations and processes. In other cases, for by-laws identified on the 2014-2018 work plan, some work was required to clearly determine the scope of the issue and clarify the need for the review of the by-law, as these had not been sufficiently identified during the preliminary survey process. As a result, the scope of some reviews changed over the course of the work plan implementation, as the issues were clarified or changed over time.

Throughout the previous Term of Council, members of Council raised concerns about emerging issues and other by-laws not addressed in the By-law Review Work Plan. Several emerging issues were complex in nature and required significant attention, such matters related as the (then) pending legalisation of recreational cannabis, and the need for a review of potential regulations for short-term and long-term rental accommodations. In addition, Councillors identified new issues through inquiries and

directions to staff, which required staff time for researching and benchmarking (e.g. issues related to pawnbrokers, payday loan establishments, tow trucks, and vital services). This research and benchmarking work required for these inquiries and directions was substantial, and essentially consisted of the early stages of a by-law review process to assess and identify the challenges and potential response to the issue. As a result, some staff capacity was shifted away from reviews identified in the approved work plan.

Staff then considered the current capacity and demand across the corporation for by-law reviews. The resources available and the required reviews vary widely from department to department. Some departments have very few by-laws that would require regular review, while other departments have many. The staff resources, staff experience and budgets available for by-law reviews vary widely from department to department. Depending on these variables, the capacity to complete by-law reviews is varied and will impact how many reviews can be completed and who is involved. Lastly, staff expressed concern about the training and tools available to assist staff with by-law reviews.

As part of the research, staff compiled a list of all City of Ottawa by-laws and associated amendments. This list included over 300 by-laws and all their associated amendments. The list was then further segregated into specific categories: public-facing, internal, time-limited, and existing processes (see Document 1 for the definitions of all categories).

Public-facing by-laws (also known as “regulatory by-laws”) can be defined as those by-laws that establish necessary regulations to address issues of municipal concern such as public safety and consumer protection, to protect persons or property, to regulate conduct in order to minimize negative consequences and nuisance, and to control activities or land uses. Examples of these public-facing by-laws include the Licensing By-law (2002-189), the Pool Enclosure By-law (2013-39), the Noise By-law (2017-255), the Temporary Signs on Private Property By-law (2004-239) or the Site Alteration By-law (2018-164).

Internal, time-limited, and existing process by-laws are proposed to be excluded from the Framework for the following reasons:

- The original concern identified was about public-facing/regulatory by-laws.

- Public-facing by-laws are those which directly impact the public and have consequences for action. They also are those which require and benefit from public engagement activities.
- Internal by-laws are administrative in nature to give effect to a decision of Council and are updated when the administrative process requires it.
- Time-limited by-laws are only in place for a specific period of time and would either end or come back to Council for review in accordance with the set term of the by-law.
- By-laws with existing processes are often regulated by provincial legislation or have been previously approved by Council; therefore, the process should be maintained.

Staff also completed a municipal comparison review of international and Canadian municipalities (Document 2). Staff reviewed ten Ontario municipalities, one Alberta municipality, and four international municipalities. All municipalities reviewed by-laws and had some process in place to complete these reviews. However, the City of Vaughan was the only Canadian municipality that had a formal and systematic by-law development and review process. Vaughan's Council-approved By-law Strategy aims to review more than 40 by-laws, which have been prioritized by experts in each field. By-law reviews are generally scheduled to be reviewed within five years or less, however, additional reviews are frequently conducted in response to other urgent factors. Much of the proposed Framework, outlined in this report, is based on the Vaughan model. All the municipalities with a process identified a maximum upper year limit for a by-law review (which varied from two to seven years) and developed a work plan to identify reviews in an existing process.

Based on the research completed and the internal input and experience, staff recommend the Framework outlined in this report, which will then guide the development of future By-law Review Work Plans.

Proposed By-law Review Framework

Framework Objectives

The Framework's objectives are to:

- Improve overall organizational effectiveness by ensuring a consistent and standardized approach corporate-wide for undertaking by-law reviews;

- Create a framework that requires a systematic review for all public-facing/regulatory by-laws; and
- Create a work plan for this term of Council that is both achievable and flexible to address emerging issues.

Components of the Framework

The Framework consists of nine components and are further detailed in the report.

Figure 1: By-law Review Framework Components



1. Application to Public-facing By-laws Only

The By-law Review Framework will apply to the City's public-facing by-laws, as these by-laws were identified as presenting concerns in the 2014 Governance Report and were the subject of the most issues raised throughout the 2014 – 2018 Term of Council. There are approximately 50 public-facing by-laws in the City currently (Document 3).

2. Maximum Ten-Year Time Period

Staff are recommending that all public-facing by-laws be reviewed within ten years of their enactment or of the last review. That is, all public-facing by-laws would be

reviewed at least once every ten years, however by-laws could be reviewed earlier, if required, subject to the by-law review criteria outlined in section 4 in this report. This maximum ten-year period would ensure that by-laws are reviewed systematically, do not become outdated, and are still relevant in their current environment. Research from municipal comparators indicated that the review time limits varied from five to seven years, but it is noted that most other municipalities had fewer public-facing by-laws. The proposed ten-year timeframe appears reasonable in the City of Ottawa’s context given the number of by-laws within the City of Ottawa and the time required to complete a fulsome review.

3. Departmental Reviews of By-laws

Individual departments will be responsible for initiating and conducting the reviews of those by-laws that relate to their work and are administered by their department. If approved, departments will apply this Framework and the processes described as they track their by-laws, determine whether a by-law review needs to be initiated, and prioritize reviews. Departments will work with centres of expertise, such as Legal Services, as required to draft their by-laws and amendments. Each department is also responsible for consultation on and implementation of their by-laws with input from appropriate stakeholders. This is consistent with current practice.

4. By-law Review Criteria

The criteria to determine the need and priority for a by-law review are outlined in Table 1. While no specific value is assigned to each criterion in terms of priority, each by-law reviewer will determine the priority of the by-law review within the overall context and in accordance with situation-specific facts, some of which may require a more urgent review. The criteria are as follows:

Table 1: Criteria for By-law Review with Definitions

Criteria	Definition
Committee or Council direction	Committee and/or Council has given staff direction or passed a motion to consider or to require a review.
Change in legislation	Legislation at the Provincial or Federal level has been passed, has changed, or has been repealed, which requires corresponding amendments to a by-law.
	Note: A full by-law review would only be triggered if the

Criteria	Definition
	legislative change in question required significant by-law changes. For example, an amendment to a key definition may not be considered a significant change, and any required amendments to affected by-laws could be addressed through other means. For example, necessary amendments to definitions could be identified and referred to the proposed Minor Amendments report.
Legal cases	Legal cases or challenges which have resulted in decisions that require changes to a by-law.
Staff-identified need/department initiative	Staff have identified issues or changes that are required because of process issues or shifts, new initiatives, program updates, technology improvements, or other such matters that have a significant impact on the by-law.
Interdepartmental request	Multiple departments have identified issues or changes that are required because of process issues, new initiatives, program updates, or other such matters, and these will have significant impact on the by-law.
Community need/emergent issue	Community has identified issues or concerns of significance which could have an impact on a by-law, or a new/emerging issue has been identified which is either not currently addressed in a by-law and requires consideration or requires changes to an existing by-law.
Issues of enforcement	Enforcement issues arising after a by-law has been implemented. This could include: lack of clarity of definitions, unclear or contradictory requirements, gaps in regulations, or changes in enforcement approach, among other things.
Complaint volume	The number of complaints associated with a specific by-law is significant and warrants a review of the by-law. Note: Complaint volume would require further analysis

Criteria	Definition
	as the issue may not be with the by-law itself but with other matters, such as a need for education with the affected sector, or improved communication with the public. The nature of the complaints must be considered.

5. By-law Review Work Plan

The Framework proposes that the City adopt one consolidated By-law Review Work Plan, approved by Council, to identify by-law reviews to be undertaken during the term of Council. The Public Policy Development branch of Emergency and Protective Services department will coordinate the development of the By-law Review Work Plan with input from all departments with respect to their own by-laws, and with input from members of Council.

The By-law Review Work Plan will initially cover the first two-years of a term of Council, with the third year to address emerging or unforeseen issues that might arise and to address any reviews that were unable to be completed in the initial two-year timeframe. In the fourth year, a minor amendments report (described in section 6) will be developed to address any issues which do not require a full review and meet the criteria discussed in section 4.

6. Minor Amendments Report

Staff also recommend a regular Minor Amendments to Existing By-laws Report that would allow for amendments to various by-laws in order to address specific issues that do not warrant a full by-law review. A Standing Committee could receive a Minor Amendments report with respect to the by-laws under its purview, as required. It is recommended that Minor Amendments Reports be developed and brought forward in the fourth year of the By-law Review Work Plan. By way of example, Council approved the Minor Updates/Amendments to Existing By-laws report (ACS2018-EPS-GEN-0003) in March 2018. The proposed Minor Amendments to Existing By-laws Report would follow a similar template.

Amendments addressed in the Minor Amendments could include:

1. Technical and process amendments: Items such as minor amendments due to legislative changes that do not change the intent and nature of the by-law, changes that require Council approval but do not change the intent of the by-law, and changes to City processes outlined in the by-law.

2. Amendments to address gaps in a by-law: Identified gaps in a by-law due to changing technology, resources, other advances, enforcement issues or similar unforeseen occurrences. These amendments could also address identified gaps or improvements to practices or processes that are minor in nature.
3. Housekeeping Amendments: Items and provisions that need to be “cleaned up” or updated in a by-law but where there is no delegated authority to make these amendments.

Amendments made through the Minor Amendments to Existing By-laws Report must also meet the following requirements:

- No public consultation is required to address the specific amendment.
- Proposed amendments do not alter the intent of the by-law.
- Issues requiring new by-laws would not be included in this report.
- Amendments requiring in budget impacts would not be included.

Members of Council would be able to refer items to this report through motions, in a similar manner to how matters are referred to Governance Review Report.

Staff continue to work on ongoing matters that have carried forward and require immediate action or that result from Committee or Council direction. For example, work continues on the Rental Accommodation Regulations Study to address several emerging issues related to both short-term and long-term rental accommodations and that will culminate in recommendations on potential regulations in these areas. Staff expect to report back to Committee and Council by the end of 2019 with recommendations. Work is also underway to harmonize smoking-related prohibitions found in various City by-laws in order to consistently address smoking and vaping of any substance, as directed by Council in December 2018 following the legalization of recreational cannabis.

7. Use of Consistent By-law Review Process

Staff from departments with public-facing by-laws will be required to use a consistent by-law review process in order to ensure sound public policy development. The by-law review process allows flexibility for each department to adapt it as needed for the specific issue and by-law. Resources on the by-law review process are being developed in collaboration with the inter-departmental working group and will be available to staff to assist with their review process. The Public Policy Development branch in Emergency and Protective Services will also provide support to other departments, if needed.

The suggested by-law review process was presented to Council in 2017 (ACS2017-EPS-GEN-0009) and includes six phases and 40 steps. The phases of the by-law review process are as follows:

1. Scoping
2. Research and Analysis
3. Consultation
4. Development of By-law and Associated Report
5. Committee and Council
6. Implementation

The process provides staff with the overall roadmap for conducting by-laws reviews. It provides a sound context in which to make decisions about by-law reviews while exercising professional judgement about what is appropriate for each situation to ensure the best possible public policy development and the best outcome for the issue under review. Use of the process will ensure that staff are working in a consistent manner when undertaking by-law reviews, while still allowing for some flexibility within each department.

8. By-law Review Webpage

As a way to maintain transparency and inform the public about by-law reviews, staff will establish a by-law review web page on City of Ottawa web site. This web page will provide a schedule of ongoing or anticipated by-law reviews, including high level updates on their status based on the key phases of a by-law review. The web page will also provide links to public consultation information, project pages, related reports for the by-law review, and other information relevant to the review including the final outcome and by-law, if applicable. This web page would be regularly updated by departmental staff responsible for the by-law review.

9. Continuous Improvement

Staff will conduct a review of the Framework during this term of Council to evaluate its effectiveness and to determine if any modifications changes are required. Any changes to the Framework will be brought forward for approval.

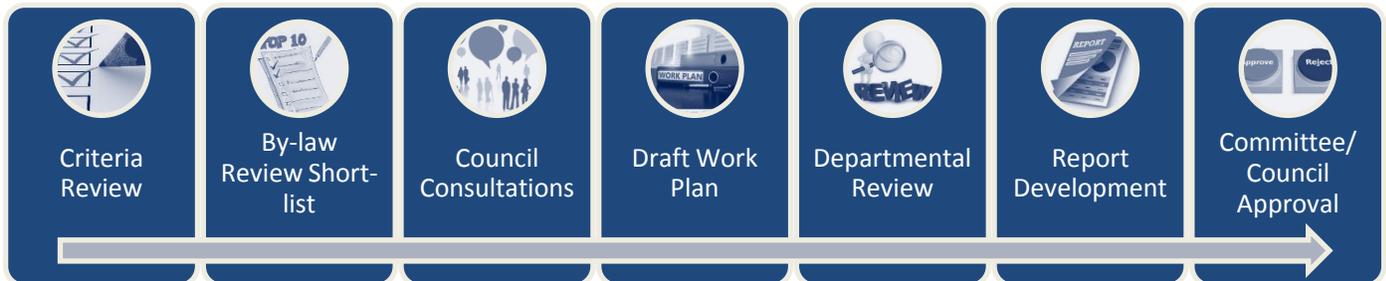
The processes outlined in this report to develop the Work Plan and to conduct by-law reviews will also be continually monitored and adapted as necessary.

Next Steps

Development of the By-law Review Work Plan

The By-law Review Work Plan development process involves seven steps to ensure adequate input and a manageable work plan for the Term of Council, as noted in Figure 2. The By-law Review Work Plan will be presented to Committee and Council in Q3 2019.

Figure 2: By-law Review Work Plan Process



The first step involves reviewing all by-laws against the by-law review criteria outlined in the Framework. Staff from each department having public-facing by-laws will review all information available against the criteria and identify, on a preliminary basis, a short-list of by-laws that require reviews during this term of Council. On an ongoing basis and in future terms, staff will also determine which by-laws will be reaching the ten-year maximum limit for review and incorporate these reviews into the recommended review list. Staff will also identify by-law reviews for emerging issues in cases where a new regulatory by-law may be required.

Once the initial criteria review is complete and a short-list is compiled, staff representatives will consult with members of Council on the by-law that are short-listed for review to obtain input and will also determine if there are other issues requiring by-law reviews that need to be addressed throughout the Term of Council. Members of Council may also identify emerging issues which require by-law review. All this information will be considered and measured against the by-law review criteria to determine whether an actual review will be undertaken in this Term of Council, and if so, how it should be prioritized.

Following consultations with Members of Council, staff will develop a draft work plan with proposed timelines for completion to reflect by-law reviews across all departments having public-facing by-laws. The timelines proposed for each review will be based on

the complexity of the review and the amount of work required. This draft work plan will be circulated among all affected departments for concurrence.

Staff will then present a report to Community and Protective Services Committee and Council with the proposed work plan and timelines for approval in Q3 2019. After the work plan is approved, staff from affected departments will implement the work plan. Staff recognize that unforeseen issues will emerge throughout the Term of Council. To address this, staff are deliberately scheduling reviews for a two-year timeframe to ensure capacity for emerging issues in the third year of the Term. Council may also add new items to the By-law Review Workplan, and timelines for existing reviews may need to shift accordingly.

Staff recognize that there remain some uncompleted by-law reviews from the previous Term of Council. These reviews will be added to the list of by-laws for consideration in this Term of Council work plan and prioritized accordingly.

By-law Review Process

To assist with the implementation of the By-law Review Process, staff will finalize training materials with input from staff on the working group. These materials will be made available to staff on City's intranet as soon as they are available.

Online Presence

Once the By-law Review Work Plan report is approved later this year, staff will develop a web page for upcoming and ongoing by-laws reviews to keep the public informed. As outlined in section 8 of this Framework report, the web page will provide a schedule of ongoing or anticipated by-law reviews, including high level updates on status based on the key phases of a by-law review. The web page will be regularly updated by departmental staff responsible for the by-law review.

RURAL IMPLICATIONS

There are no rural implications associated with the recommendations in this report.

CONSULTATION

There were no public consultations associated with this report as it is administrative in nature. Public consultations will take place as part of individual by-law reviews, in keeping with the City's Public Engagement Strategy and past practices for by-law reviews.

An internal working group was established to develop the framework. The working group consisted of representatives from City Clerk and Solicitor, Planning, Infrastructure and Economic Development, Public Works and Environmental Services, Transportation Services and Emergency and Protective Services. Furthermore, Emergency and Protective Services staff consulted with the Business Support Services Managers, Senior Leadership and Councillors on the development of this framework.

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendation contained in this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no specific accessibility impacts associated with the recommendations in this report. Accessibility will be considered accordingly as part of each By-law Review undertaken under this Framework.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with the recommendations in this report.

TERM OF COUNCIL PRIORITIES

The recommendations of this report align with the overall 2014 – 2018 Term of Council vision of increasing public's confidence in City government. Furthermore, the recommendations of this report align with the overall strategic priority of Governance, Planning and Decision-Making which states:

Governance, Planning and Decision-Making: Achieve measurable improvement in residents' level of trust in how the City is governed and managed, apply a sustainability lens to decision-making, and create a governance model that compares well to best-in-class cities around the world.

SUPPORTING DOCUMENTATION

Document 1 – Definition of By-law Categories

Document 2 – Municipal Comparison Research Summary

Document 3 – List of Public-facing By-laws

DISPOSITION

Staff will implement the By-law Review Framework as outlined in this report. Staff will report back to Council through the By-law Review Work Plan (2019-2022) report with respect to by-law reviews to be undertaken in this term of Council.