

DATE OF MEETING MARCH 11, 2024

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SUBJECT COUNCIL PROCEDURE AMENDMENT BYLAW

OVERVIEW

Purpose of Report

To present amendments to the Council Procedure Bylaw resulting from Bill 44, Housing Statutes (Residential Development) Amendment Act, 2023 as it relates to Public Hearings and other housekeeping amendments.

Recommendation

That the Governance and Priorities Committee provide direction on the options presented on proposed amendments to Council Procedure Bylaw No. 7272 as it relates to delegations when a public hearing cannot be held under Section 464 of the *Local Government Act* and other housekeeping amendments identified in the 2024-MAR-11 report by the Deputy Corporate Officer.

BACKGROUND

As outlined in a concurrent report from Current Planning, the Province made amendments to the *Local Government Act* (Section 464) which affects when a local government can hold a public hearing.

To better understand what these changes would mean for local governments, Staff attended a legal workshop that focused on the legal issues local governments are facing under the recently enacted provincial housing legislation and regulations. Staff also sought specific guidance from the City Solicitor on what effect the new legislation would have on Council's Procedure Bylaw as it relates to delegations on development applications in the absence of a public hearing and the implications surrounding public engagement.

It is important to understand what constitutes a formal public hearing. Staff have been advised that a meeting could be considered a de facto hearing when you have the following:

- a quorum of Council,
- in-person submissions; and
- a proposed development bylaw.

In the absence of the opportunity for verbal public input through a public hearing, there is a need to clarify when members of the public can form a delegation through Section 19 of Council's Procedure Bylaw when the bylaw is first introduced as currently, this section allows for unlimited delegations (up to five minutes each) on matters pertaining to an agenda item, including bylaw introduction.

When this question was posed at a legal seminar, and to the City Solicitor, it was advised that by permitting delegations at first reading, it could indirectly do what is prohibited by the new legislation which is holding a public hearing in all but name (a de facto public hearing). It could

also give rise to procedural unfairness, particularly because the notice that is sent to the surrounding neighbours advising of the development (which is still mandatory) would state that the local government is prohibited from holding a public hearing and where the bylaw may be inspected. It may be problematic to find out after the fact that a neighbour had appeared as a delegation when the bylaw was first introduced to express their views.

To prevent that situation from happening, the recommended approach is for local governments to amend their Procedure Bylaws to clarify that delegations pertaining to a bylaw where a public hearing is prohibited in accordance with Section 464 of the *Local Government Act* be prohibited in keeping with the intent of the new legislation.

The goal for public engagement to occur earlier in the process through the OCP process where public hearings must be held. In doing so, the OCP becomes the crucial city planning document that lays out what kind of buildings can be developed in which parts of the City.

Other suggestions for having early public engagement include having the developer host an information session on their proposal prior to first reading where members of the public could find out more details and ask questions. Another suggestion was to clearly state in the notices sent to surrounding property owners that opportunities would exist to express their viewpoints to Council in writing as written comments would not violate public hearing rules. Therefore, when a public hearing is not permitted, written submissions could be accepted informally throughout the bylaw reading process.

This legislation is so new, there is no case law to test these new legislative provisions so Council may wish to wait until such time that the legislation has been litigated, and then make the necessary changes to the Council Procedure Bylaw based on that outcome. However, in the absence of a public hearing, allowing delegations anytime up to third reading poses the risk of a de facto public hearing.

Although the focus of this report is on Section 19 of the Procedure Bylaw, opportunities exist to address other proposed amendments related to delegations generally as well as other minor housekeeping matters. For the Committee's convenience, all proposed amendments, with options where possible, are addressed in numerical order and highlighted in red in Attachment 1 so the Committee can see how the amendments would be incorporated within the consolidated bylaw.

Section 9.1

With the adoption of the Council Correspondence Policy and the Council Support Policy a new "Correspondence" section should be added where requests for letters of support and correspondence items brought forward by Council members would be added.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to add a "Correspondence" section to Council's Procedure Bylaw.

Section 19.4 (c)

Section 19.4 (c) should be clarified to include the words "been acted upon by Council". This clarifies that delegations may not be approved once the action has been taken by Council and/or referred to staff for action.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to add the words “been acted upon by Council” in section 19.4(c) of Council’s Procedure Bylaw.

Section 19.4(d)

This section is the substance of the staff report as it relates to delegations associated with the new public hearing rules as outlined in Section 464 of the LGA.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council select one of the following options for Section 19(d) to Council’s Procedure Bylaw:

- 1. Refuse to place a Delegation on the agenda if the matter relates to a bylaw in respect of which a public or statutory hearing has already been held or where third reading has been given.***

This option gives members of the public the opportunity to be a delegation at anytime up to public hearing or third reading where a public hearing is prohibited or if Council decides not to hold a public hearing as per Section 464 of the LGA. This option is in line with the current provision, with an additional restriction on delegations after third reading for zoning bylaw amendments where a public hearing is not held or is prohibited as after that juncture, the applicant is working to complete the conditions of rezoning as per Council direction. Staff note that the new legislation potentially allows zoning bylaw amendments to be given multiple readings at the Council meeting where the bylaw is introduced. This option would be selected should Council wish to wait until such time that the legislation has been litigated.

- 2. Refuse to place a Delegation on the agenda if the matter relates to a bylaw in respect of which a public or statutory hearing is:***
 - i) prohibited in accordance with Section 464 of the Local Government Act;***
 - ii) notice of first reading has been given where Council has decided not to hold a public hearing; or***
 - iii) has already been held.***

This option addresses many of the concerns raised at the legal seminars and by the City Solicitor where there is the potential to have a de facto public hearing if delegations were permitted to address Council on a rezoning application where a public hearing is prohibited. It clarifies delegation procedures where a public hearing is prohibited, discretionary (where Council decides not to hold a public hearing) or mandatory (where a public hearing is required or where Council decides to hold a public hearing). While this option would not permit members of the public to be delegations if a public hearing is prohibited, it would allow delegations for mandatory or discretionary public hearings anytime up until the notice of first reading is given (if a public hearing is not held), or until a public hearing (if held).

Both options would still allow for members of the public to contact Staff or members of Council informally throughout the application process.

For the Committee's convenience, a chart has been included to synopsize each option:

	WHEN A DELEGATION CAN BE ACCEPTED			
	After Application Submission	After Notification of 1 st Reading (where PH not held)	Up to and including PH; or 3 rd Reading (where PH not held)	After PH; or 3 rd Reading (where PH not held)
<i>Current Provision: 19.15(a) (public hearing held)</i>	YES	<i>N/A</i>	YES	NO
Option 1 <i>(public hearing held or where 3rd reading given)</i>	YES	<i>N/A</i>	YES	NO
Option 2 <i>i. public hearing prohibited</i>	NO	NO	NO	NO
<i>ii. public hearing not held</i>	YES	NO	NO	NO
<i>iii. public hearing held</i>	YES	<i>N/A</i>	YES	NO

Section 19.9

Currently, delegations (both on agenda items and items not on the agenda) are given 5 minutes to present unless a longer time period is permitted by a motion passed by a unanimous vote of all of the Council Members present. There is also no limit to the number of delegations that can appear before Council provided the topic is on the agenda. With up to 5 minutes and no limit, there is the potential for a single topic to inadvertently overshadow the other Council business at the meeting. To address this, some municipalities limit the number of delegations at a meeting; others have a time period limit. Not unlike some Public Hearings where there is the potential for a large number of speakers, a 3 minute limit is placed on delegations. This was also the case at a recent Special Governance and Priorities Committee meeting wherein members of the public were provided 3 minutes each to present their question or provide comments.

Retaining the 5 minute limit but placing a limit on the number of delegations could be problematic as there is the potential for an individual or group to stack the meeting by getting delegations in early. Should the Committee wish to address both potential issues whereby no limit is placed on the number of delegations but still have a mechanism in place to ensure a single topic does not overshadow the business of Council, Staff recommend the Committee implement a 3 minute time limit on delegations so that hot topics could be accommodated within the Council meeting but also provide the flexibility for Council to extend the time limit by two-thirds majority of Council instead of by the unanimous vote of all members present.

For clarity this section would not apply to presenters under the Presentations section where the time allotted is much more flexible as that section is where consultants and presenters that are invited by Council and staff would be placed.

Recommended Motion:

- That the Governance and Priorities Committee recommend that Council direct staff to amend the time limit for delegations in Section 19.9 of Council's Procedure Bylaw from 5 minutes to 3 minutes; or***
- That the Governance and Priorities Committee recommend that Council retain the status quo of 5 minutes for delegations in Section 19.9 of Council's Procedure Bylaw.***

Section 19.10

This section is not necessary and can be removed as it is covered in section 19.9(b).

Section 19.14

The option selected for section 19.9 should also be added to this section.

Section 19.15 (a)

This section relates to delegations unrelated to agenda items. The same provision that is selected for Section 19.14(d) should also be added to this section. Once the Committee selects its preferred option the same applicable provision would be added to Section 19.15(a).

Section 19.15(k)

Section 19.4(b) under Delegations Pertaining to Council Agenda Items authorizes the Corporate Officer to screen delegation requests and refuse to put a delegation on if they have already spoken to Council on the same matter and no new significant information is provided. This same provision should also be added to the section Delegations Unrelated to Agenda Items.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to add a Section 19.15(k) to Council's Procedure Bylaw which states: "if the Delegation has already spoken to Council on the same matter and no new significant information is provided."

Section 19.17 (c)

Best practises are such that Council should not act on a request from a delegation following a presentation and instead refer the matter to staff for a report or utilize the Notice of Motion provision to give Council and staff the opportunity to look into a matter in more detail. While this is not an issue with the current Council, other local governments have this provision included in their Council Procedure Bylaws.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to add a Section 19.17(c) to Council's Procedure Bylaw which states: "not act on a request from a delegation following the presentation unless consent by a two-thirds vote of Council present is given."

Section 23.1

The intent of question period is for members of the public to ask questions on matter considered by Council at that meeting. Most questions should be able to be asked within a 3 minute time limit and Council can always give opportunities for members to ask more than one question.

Recommended Motion:

- 1. That the Governance and Priorities Committee recommend that Council direct staff to amend the question period in Section 23.1 in Council's Procedure Bylaw to 3 minutes; or***
- 2. That the Governance and Priorities Committee recommend that Council retain question period at 5 minutes.***

Section 50.4 and 50.5

Currently Sections 50.4 and 50.5 do not follow the timeframe for Council Committee deadlines and needs to be fixed.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to make the necessary housekeeping amendments to Section 50.4 and 50.5 of Council's Procedure Bylaw as outlined in Attachment 1 to the 2024.MAR-11 staff report by the Deputy Corporate Officer.

Section 51.9, 51.10, and 51.11

These sections spell out the process for how errors or omissions in the minutes would be addressed. Should a Council member see any errors or omissions, they should advise the Corporate Officer as soon as possible after the minutes are distributed or at least one hour before the meeting to which the minutes would be officially adopted. That way, if there is a question of accuracy, there would be time to review the recording.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to add Section 51.9, 51.10, and 51.11 to Council's Procedure Bylaw as outlined in Attachment 1 to the 2024-MAR-11 staff report by the Deputy Corporate Officer.

Section 55.5

The final housekeeping amendment for the Committee's consideration is outlined in Section 55.5. The proposed amendments are required to ensure Council's Procedure Bylaw matches Council's Public Hearing Process Policy.

Recommended Motion:

That the Governance and Priorities Committee recommend that Council direct staff to make the necessary housekeeping amendments to Section 55.5 of Council's Procedure Bylaw as outlined in Attachment 1 to the 2024-MAR-11 staff report by the Deputy Corporate Officer.

In terms of next steps, the Committee's endorsed recommendations will go to Council on March 18th for formal consideration by Council. From there a Bylaw Amendment containing the supported changes would be brought forward to the April 8, 2024 Council meeting and then notice of the proposed bylaw amendments would be advertised as required under Section 124(3) of the *Community Charter* prior to final adoption.

SUMMARY POINTS

- the Province made amendments to the *Local Government Act* (Section 464) which affects when a local government can hold a public hearing.
- The new legislation requires amendments to be made to Council's Procedure Bylaw as it relates to delegations in the absence of a public hearing.
- Other housekeeping amendments to the Council Procedure Bylaw are being brought forward for the Committee's consideration.

ATTACHMENTS:

Attachment 1 – B7272 – Council Procedure Bylaw with Proposed Amendments

Submitted by:

Karen Robertson,
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Concurrence by:

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Jeremy Holm,
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