

Date: 2022-02-14

Subject: **Proposed Amendments to Procedure By-law 160-2004 Requested by City Council**

Contact: Peter Fay, City Clerk, City Clerk's Office, Legislative Services

Report Number: Legislative Services-2022-194

Recommendations:

1. That the report titled: **Proposed Amendments to Procedure By-law 160-2004 Requested by City Council**, to the Special Meeting of City Council held on February 22, 2022, be received; and
2. That Council consider one of the following options in regard to proposed amendments to Procedure By-law 160-2004, as amended:
 - a. That this report and the proposed amendments be referred to the Procedure By-law Review Sub-Committee for consideration, as part of the ongoing Procedure By-law review work, with recommendations from the Sub-Committee presented to the Governance and Council Operations Committee and City Council no later than May, 2022; **or**
 - b. That Council consider at this Special Meeting proposed meeting procedure amendments, as set out in this report, and adopt appropriate resolutions to amend Procedure By-law 160-2004, addressing the following Sections:
 - i. Section 13 (Reopening a Question);
 - ii. Section 4.10 (Additions to an Agenda);
 - iii. Section 14 (Suspension of Rules in Procedure By-law); and
 - iv. Section 2.9 (13) (Closed Section) regarding staff attending closed session;and that, based on Council's resolutions to amend the Procedure By-law, an appropriate by-law be enacted to amend Procedure By-law 160-2004 to give effect to Council's decisions.

Overview:

- **Council passed resolutions at its February 8 and 11, 2022 Special Meetings to convene a Special Meeting on February 22, 2022 to consider proposed amendments to Procedure By-law 160-2004, to address the following matters:**

- **Removing Section 13 (Reopening a Question) from the Procedure By-law;**
 - **Removing two-thirds majority voting requirements from the Procedure By-law for the following provisions:**
 - **Section 4.10 (Additions to an Agenda), and**
 - **Section 14 (Suspension of Rules in Procedure By-law); and**
 - **Amending Section 2.9 (Closed Session) of the Procedure By-law to clarify staff attendance within closed session in certain circumstances.**
- **This report provides information for Council's consideration regarding these proposed amendments.**
 - **Public notice regarding the February 22 Special Meeting, and proposed amendments to the Procedure By-law, was given by web posting in accordance with the Procedure By-law.**

Background:

At its February 8 Special Meeting, City Council passed a resolution to consider the following at a Special Meeting of Council called for February 22:

That a review be undertaken of the Procedure By-law, and a Notice of Motion be listed for consideration at a Special Meeting of Council, to be convened on February 22, 2022, following the provision of public notice on the matter, such motion to include the following proposed changes:

That the Procedure By-law be amended to remove requirement:

- 1) For a two-thirds threshold vote on any matters within the Procedure By-law; and
- 2) For a Member to have been required to have voted on the prevailing side of a resolution, in order to move a reconsideration motion with respect to such resolution.

At its February 11 Special Meeting, City Council passed a resolution to consider the following at a Special Meeting of Council called for February 22:

1. THAT the City's Procedure By-law 160-2004, as amended, be and is hereby further amended by deleting Section 13 (Reopening a Question) in its entirety.
2. THAT section 4.10 and section 14 of the City's Procedure By-law 160-2004, as amended, be hereby further amended by deleting the words "two-thirds (2/3)" wherever they appear.
3. THAT the City's Procedure By-law 160-2004, as amended, be hereby further amended by deleting section 2.9 (13) and replacing it with the following:
 - (13) For discussion of items regarding confidential matters related to an individual employee during a closed session, the Chief Administrative Officer will designate which staff members may be present and the Chief Administrative Officer may, if appropriate, be the designate of the Clerk for that portion of the closed session. Where the confidential matter relates to the Chief Administrative

Officer, City Council shall determine which staff members may be present during a closed session.

This report provides information for Council consideration regarding proposed amendments to the Procedure By-law pertaining to the following:

- Removing Section 13 (Reopening a Question) from the Procedure By-law;
- Removing two-thirds majority voting requirements from the Procedure By-law for the following provisions:
 - Section 4.10 (Additions to an Agenda), and
 - Section 14 (Suspension of Rules in Procedure By-law); and
- Amending Section 2.9 (Closed Session) of the Procedure By-law to replace sub-Section (13) with the following:

(13) For discussion of items regarding confidential matters related to an individual employee during a closed session, the Chief Administrative Officer will designate which staff members may be present and the Chief Administrative Officer may, if appropriate, be the designate of the Clerk for that portion of the closed session. Where the confidential matter relates to the Chief Administrative Officer, City Council shall determine which staff members may be present during a closed session.

Current Situation:

Procedure By-law Review Sub-Committee:

Council established a Procedure By-law Review Sub-Committee in 2021 to undertake a review of Council's meeting procedures. The original Committee terms of reference and work plan contemplated recommended meeting procedure amendments to be presented to Council by the end of 2021, but that has been delayed due to other work priorities. The review work continues and proposed Procedure By-law updates are currently tracking for presentation to the Committee in late March/early April.

The Procedure By-law, as a statement of Council's collective rules to govern its proceedings and enable effective and efficient meetings and decision-making, belongs to Council and is subject to change by Council. While the *Municipal Act, 2001*, mandates that a council shall have a procedure by-law for "governing the calling, place and proceedings of meetings," the system of specific rules to be included and followed is the decision of the respective municipal council in keeping with prevailing legislative requirements. The meeting procedures function as an integrated system of rules to enable effective decision-making. Amendments to a procedure by-law need to be viewed from both a particular rule and holistic perspective to ensure ad hoc rule changes do not create unintended consequences for the decision-body, its meetings or the decisions it is empowered to make.

Council's procedural reference, Bourinot's Rules of Order, provides some guidance on changing meeting rules, stating that:

"26. Changing the Rules

If at any time it becomes necessary or advisable to change the rules, care must be taken that the changes are not made haphazardly. Suggested alterations should be referred to a committee for detailed consideration. When all of the changes have been worked out by the committee, notice should be given at one meeting of the organization that at the next or a subsequent meeting a motion will be introduced that proposes these changes. All active members should then be advised in detail of the changes intended so that they can come to the meeting fully informed. ...”

While Council may wish to consider and amend its Procedure By-law at its February 22 Special Meeting, it may also wish to consider referring this report and the proposed amendments to the Procedure By-law Review Sub-Committee for consideration as part of the entire package of possible meeting rule updates so the full system of meeting rules is fully understood and considered.

The staff report recommendations provide Council the option to either refer this report to the Procedure By-law Review Sub-Committee for consideration within the overall review of its meeting rules and report back to Council by May 2022 (to allow time for Sub-Committee review of proposed rule changes once received in March/April 2022), or to consider and amend the Procedure By-law at its February 22 Special Meeting.

If Council wishes to proceed now with proposed Procedure By-law amendments, the following sections address the specific matters identified by Council for proposed rule changes.

Two-thirds Majority Votes:

The Procedure By-law includes three instances where a two-thirds vote is required:

- Reconsideration of a decision made at the same or a subsequent meeting within the current term
- Adding new business to a meeting agenda at a meeting
- Temporarily suspending the meeting rules.

To assist Council in considering proposed amendments to the Procedure By-law, staff reviewed other selected Ontario municipal procedure by-laws, as well as Council’s procedural reference document – Bourinot’s Rules of Order.

Reconsideration Provisions:

The reconsideration provisions are defined in Section 13 of the Procedure By-law as follows:

13. REOPENING A QUESTION

13.1 Reopening a Question At the Same Meeting

There shall be no further discussion of an item already voted on at a meeting unless:

- (1) there is a two thirds (2/3) majority vote to reopen the question on that item;
- (2) the member who moves the motion to reopen the question must be a member who voted on the prevailing side of the original motion;
- (3) the member shall briefly, and without debate, state the reasons for making the motion.

13.2 Reopening a Question After The Matter Has Been Dealt With By Council

There shall be no further discussion of a matter previously dealt with by resolution unless:

- (1) notice to that effect has been given pursuant to section 8;
- (2) there is a two thirds (2/3) majority vote to reopen the question when the notice of motion is voted on;
- (3) the member who moves the notice of motion to reopen the question must be a member who voted on the prevailing side of the original motion; and
- (4) the member who moves the notice of motion to reopen the question shall briefly state, without debate, the reasons for making that motion.

13.3 No Motion To Reopen Shall Be Reconsidered Once Resolved

No motion to reopen the question shall be considered again if there has been a previous motion to reopen the question which was not approved by a two-thirds (2/3) majority vote, within the current term of the council.

Council is considering removal of this entire section of the Procedure By-law. This provision has been in the Procedure By-law since enacted in 2004, with an amendment added in 2016 to require a Member of the prevailing side of a decision to initiate a reconsideration.

A review of some other procedure by-laws suggests a number of municipalities continue to employ a 2/3 majority vote threshold for reconsiderations. However, some differentiate between decision reconsiderations within a meeting (while still in session) vs. reconsidering a decision at a subsequent meeting. Some by-laws do not employ a higher threshold vote, but instead employ a passage of time condition before a reconsideration may be permitted. Some by-laws state a decision cannot be reconsidered within the same term until 12 months (or in some by-laws, 4 regular meetings) have passed after the original decision was made.

Some by-laws also include provisions where a reconsideration motion may not be in order if certain actions or events have occurred, including:

- The original decision results in a legally or contractually binding commitment in place as of the reconsideration date

Some by-laws also state when a matter is not a reconsideration:

- If it does not alter the core purpose or intent of the previous decision
- If it strengthens or clarifies a previous decision
- If it moves a matter through a series of steps or phases

Some common features of reconsideration provisions in procedure by-laws include:

- Initiated by a member on the prevailing side of the original decision
- A process for reconsideration including a Notice of Motion
- Generally cannot be considered more than once on an item
- Allowing debate on the merits of the reconsideration (for or against) but not on the original decision
- If decision reconsidered, then:
 - o returns Council to previous decision which remains in effect until Council decides otherwise
 - o generally becomes the immediate item of business to be taken up
 - o open entire original decision unless motion specifies otherwise
- cannot reconsider a reconsideration motion

Bourinot's Rules of Order:

Bourinot's suggests procedures are sometimes provided for reconsidering a decision that carried or failed. Reconsiderations may be allowed with "due notice and formal motion, and it is customary to insist on a two-thirds majority vote on a motion to reconsider."

Analysis:

If Council wishes to remove its reconsideration provisions completely, there should be some threshold, if not a vote, to ensure the business of the municipality can continue to move forward with some certainty and clarity to act on those decisions and minimize the possibility of Council revisiting decisions without some level of scrutiny. A two-thirds vote to reconsider a previous decision at a subsequent meeting does help provide clarity in terms of focusing Council to move forward instead of looking back.

If Council wishes to remove the two-thirds vote threshold, it should consider other mechanisms to minimize revisiting decisions already made. Whether it is a lower threshold vote (e.g., majority) or a time period, with some conditions for which a reconsideration is not permitted (as set out in other by-laws), this will help Council guard against the possibility of spending time revisiting its decisions instead of moving forward with its municipal business.

Proposed Procedure By-law Amendments:

If Council wishes to completely remove its Reconsideration provisions under Section 13, the following motion can be introduced:

That Procedure By-law 160-2004, as amended, be further amended to delete Section 13, Reopening a Question.

If Council wishes to retain its Reconsideration provisions under Section 13, but:

- reduce the voting threshold to a simple majority,
- eliminate the provision for a Member on the prevailing side initiating a reconsideration, and/or
- enable the ability to reconsider a reconsideration motion during the term,

the following motion can be introduced:

That Procedure By-law 160-2004, as amended, be further amended to delete and replace Section 13 as follows:

13 REOPENING A QUESTION

13.1 Reopening a Question At the Same Meeting

There shall be no further discussion of an item already voted on at a meeting unless:

- (1) there is a majority vote to reopen the question on that item;
- (2) the member who moves the motion to reopen the question shall briefly, and without debate, state the reasons for making the motion.

13.2 Reopening a Question After The Matter Has Been Dealt With By Council

There shall be no further discussion of a matter previously dealt with by resolution unless:

- (1) notice to that effect has been given pursuant to section 8;
- (2) there is a majority vote to reopen the question when the notice of motion is voted on;
- (3) the member who moves the notice of motion to reopen the question shall briefly state, without debate, the reasons for making that motion.

If Council wishes to establish further conditions limiting reconsideration motions and/or clarifying motions that are not a reconsideration, the following amendment could be introduced:

That Procedure By-law 160-2004, as amended, be further amended to add the following to Section 13 as follows:

13.3 Reopening a Question Conditions

- (1) A matter previously decided by Council cannot be reopened if action has been taken in implementing the decision resulting in a legally or contractually binding commitment in place on the date the motion to reopen is considered by Council.
- (2) Sections 13.1 and 13.2 do not apply when:
 - (i) a motion pertains to a decision of a previous Council;
 - (ii) a motion that, while pertaining to a previously decided motion, does not alter the core purpose or intent of the previously decided motion;
 - (iii) a motion presented in respect of a previously decided matter for the purpose of strengthening or clarifying the original decision; or
 - (iv) a motion presented in respect of a previously decided matter for the purpose of moving a matter through a series of necessary steps or phases.

Adding New Business:

The New Business provisions are defined in Section 4.10 of the Procedure By-law as follows:

4.10 Additions to an Agenda

- (1) Additions to the agenda for a meeting of the council may be permitted by a two-thirds (2/3) majority vote.
- (2) Additions to the agenda for a meeting of a committee may be permitted by a two-thirds (2/3) majority vote.
- (3) Notwithstanding subsections (1) and (2) above, a Notice of Motion may be added to an agenda with a two-thirds (2/3) majority vote provided the motion is to be dealt with at a subsequent meeting.

Council is considering amending this section of the Procedure By-law to reduce the voting threshold to a majority vote. This provision has been in the Procedure By-law since enacted in 2012 in regard to Council meetings, with the previous rule being an unanimous vote of Council to add new business at a meeting.

A review of some other procedure by-laws suggests municipalities either have a voting threshold (2/3 or majority) or employ other means for handling new business, such as issuing an addendum or revised agenda with additional business included after the publication of the original agenda and/or employ urgency thresholds for inclusion of new business on a meeting agenda. Brampton currently only adds supplementary items on a revised agenda and any new business from Members or staff received after the

agenda publication is subject to the current two-thirds majority vote threshold to be added to a meeting agenda.

Some by-laws include criteria for inclusion of new business on revised or addendum agendas, including:

- government deadline,
- legal implications,
- contractual implications,
- financial implications,
- congratulatory or condolence nature, or
- Council or Committee direction

Some by-laws add a further consideration for “urgent” business, generally defined to include a statutory time requirement, an emergency health or safety matter, time sensitivity for decisions, and/or relates to a significant financial, legal, or contractual deadline required before the next scheduled meeting. Decision-making on the urgency may be assigned to the Chair, CAO, Clerk and/or decision-body.

Bourinot’s Rules of Order:

Bourinot’s does not explicitly provide for rules on new or added business on an agenda, but does suggest that any such business should be subject to notice.

Analysis:

Through the ongoing review of the Procedure By-law, to be reported through the Council-established Procedure By-law Review Committee, staff have been investigating a possible criteria-based approach for adding new business at a meeting based on urgency or emergency conditions similar to those mentioned above.

An amendment to the Procedure By-law now to reduce the new business addition threshold to a majority vote, would align with Council’s current practices as recorded votes are rarely requested to confirm whether a two-thirds majority exists to add new business to a meeting agenda. There appears to be a consensus that adding new business is generally agreed to at meetings. Staff can report back as part of the Procedure By-law review work on further proposed amendments to introduce urgency or emergency pre-conditions for adding new business that could not otherwise be decided at a future meeting.

A possible contributing factor to the volume of proposed added new business at a meeting results from the current rule establishing an agenda closing deadline of the Tuesday at 4:30 p.m. the week preceding the meeting date for Member new business items in the form of a Discussion Item (for a Committee meeting) or Notice of Motion (for a Council meeting). This agenda deadline may be viewed as too early and could be changed to one closer to the meeting agenda publication date (e.g., the Wednesday or Thursday at 4:30 p.m. the week preceding the agenda publication date).

In addition, if Council wishes to facilitate the propose addition of new business after the meeting agenda is published, it could amend the meeting procedures to direct the Clerk's Office to prepare and publish an addendum agenda after the original agenda deadline and publication, to account for late new business proposals from Members or staff, perhaps subject to a majority vote at the start of the meeting when approving the agenda for the meeting.

Proposed Procedure By-law Amendments:

If Council wishes to amend the voting threshold to a simple majority vote for adding new business to a meeting, the following motion can be introduced:

That Procedure By-law 160-2004, as amended, be further amended to delete and replace 4.10 as follows:

4.10 Additions to an Agenda

- (1) Additions to the agenda for a meeting of the council may be permitted by a majority vote.
- (2) Additions to the agenda for a meeting of a committee may be permitted by a majority vote.
- (3) Notwithstanding subsections (1) and (2) above, a Notice of Motion may be added to an agenda with a majority vote provided the motion is to be dealt with at a subsequent meeting.

Temporary Suspension of the Meeting Rules:

The provisions to temporarily suspend the meeting procedures is defined in Section 14 of the Procedure By-law as follows:

14. SUSPENSION OF RULES IN PROCEDURE BY-LAW

Except where it is otherwise provided, any one or more of these rules may be temporarily suspended on a two-thirds (2/3) majority vote, except where such suspension may be contrary to the *Municipal Act*.

Council is considering amending this section of the Procedure By-law to reduce the voting threshold to a majority vote. This provision has been in the Procedure By-law since it was enacted.

A review of some other procedure by-laws suggests many municipalities employ a two-thirds majority vote to temporarily suspend the meeting rules. A number of by-laws specify meeting rules that cannot be suspended including:

- matters that are contrary to legislation

- amending procedures
- quorum provisions
- no new business added to special meetings
- meetings open to public
- reconsideration provisions

Some by-laws requires a temporary suspension motion to include the rationale for the rule suspension.

Some common features of suspension provisions in procedure by-laws include:

- not debatable or amendable
- single occasion or specific circumstance requirement with no carry-over to subsequent agenda items or meetings

Bourinot's Rules of Order:

Bourinot's suggests it may occasionally be necessary to suspend certain rules, but this should be restricted to cases of extreme urgency or extraordinary circumstances. A motion to suspend the rules should have a mover and seconder and it is customary to insist upon unanimous consent. When the purpose for which a rule has been suspended is achieved, the suspended rule returns to the full force and effect.

Analysis:

Suspending the meeting rules should be a rare and extraordinary event, tailored to a temporary or specific circumstance. Maintaining a higher threshold vote such as two-thirds helps to ensure the rules established by Council are followed by Council, while accommodating extraordinary circumstances. If Council wishes to amend the voting threshold to a majority vote, it should consider whether to itemize specific rules that cannot be temporarily suspended to safeguard the system of meeting rules designed to facilitate effective and efficient meetings and decision-making.

Proposed Procedure By-law Amendments:

If Council wishes to amend the voting threshold to a simple majority vote to temporarily suspend its meeting procedures, the following motion can be introduced:

That Procedure By-law 160-2004, as amended, be further amended to delete and replace Section 14 as follows:

14. SUSPENSION OF RULES IN PROCEDURE BY-LAW

Any one or more of these rules may be temporarily suspended on a majority vote, except where such suspension may be contrary to the *Municipal Act, 2001*.

Closed Session Staff Attendance:

The provisions for determining staff attendance in closed session meetings regarding an individual employee, as set out in Section 2.9 (13) of the Procedure By-law state:

2.9 Closed Sessions

- (13) For discussion of items regarding confidential matters related to an individual employee during a closed session, the Chief Administrative Officer will designate which staff members may be present and the Chief Administrative Officer may, if appropriate, be the designate of the Clerk for that portion of the closed session

Council is considering amending this section of the Procedure By-law to replace the clause with the following (underlining added to delineate proposed wording change):

- (13) For discussion of items regarding confidential matters related to an individual employee during a closed session, the Chief Administrative Officer will designate which staff members may be present and the Chief Administrative Officer may, if appropriate, be the designate of the Clerk for that portion of the closed session. Where the confidential matter relates to the Chief Administrative Officer, City Council shall determine which staff members may be present during a closed session.

This original provision has been in the Procedure By-law since it was enacted.

This rule appears to be unique to Brampton, as staff could not find a similar rule in place in other reviewed procedure by-laws.

Bourinot's Rules of Order:

Bourinot's does not contain any procedural reference to provide guidance in this situation.

Analysis:

The *Municipal Act, 2001*, includes provisions for proper closed session meetings, including consideration of personal matters about an identifiable individual, including municipal or local board employees. It would seem logical that the Chief Administrative Officer, responsible for "exercising general control and management of the affairs of the municipality" would be best placed to determine appropriate staff to be present for any closed session deliberation regarding an individual employee. For clarity in application of the meeting rule, if the closed session deliberation is in regard to the Chief Administrative Officer, it would be appropriate for the Council to decide which staff members may be present during closed session.

Proposed Procedure By-law Amendments:

If Council wishes to amend this closed session provision, the following motion can be introduced:

That Procedure By-law 160-2004, as amended, be further amended to delete and replace Section 2.9 (13) as follows:

- (13) For discussion of items regarding confidential matters related to an individual employee during a closed session, the Chief Administrative Officer will designate which staff members may be present and the Chief Administrative Officer may, if appropriate, be the designate of the Clerk for that portion of the closed session. Where the confidential matter relates to the Chief Administrative Officer, City Council shall determine which staff members may be present during a closed session.

Corporate Implications:

Financial Implications:

There are no direct financial implications resulting from this report.

Other Implications:

Staff are continuing with the ongoing Council-authorized Procedure By-law review project, and anticipate reporting to Council in the Spring through the Procedure By-law Review Sub-Committee, Governance and Council Operations Committee, and ultimately to City Council with recommended meeting procedure updates. That work will be informed by and reflect Council's current consideration of meeting rule changes from the February 22 Special Meeting.

Term of Council Priorities:

This report achieves the Term of Council Priority of a Well-run City through the establishment of effective and efficient meeting procedures, as expressed through Council's Procedure By-law, to govern the proceedings and decision-making of the Council.

Conclusion:

Council has called a Special Meeting to consider proposed specific amendments to its Procedure By-law. The by-law, as a statement of Council's collective rules to govern its proceedings and enable effective and efficient meetings and decision-making, belongs to Council and is subject to change by Council. This report provides context for the proposed changes under consideration by Council.

Authored by:

Approved by:

Peter Fay, City Clerk,
City Clerk's Office

Marlon Kallideen, Commissioner,
Legislative Services

Attachments: *nil*