
Subject: Recommended Changes to Council's Procedural By-law and Code of Conduct for Members of Council and Local Boards

Report to: Regional Council

Report date: Thursday, July 25, 2024

Recommendations

1. That Regional Council **APPROVE** the following changes to the Procedural By-law and Code of Conduct for Members of Council and Local Boards:
 - a) Amend section 1 of the Procedural By-law to include a definition of "jurisdiction";
 - b) Amend section 19 of the Procedural By-law to include a provision requiring all motions dealing with issues outside Regional Council's core jurisdiction to have a mover and seconder identified before being added to the agenda;
 - c) Amend section 19 of the Procedural By-law to include a provision encouraging Members of Council to consult with the Chief Administrative Officer and Regional Clerk before bringing a motion forward that would be considered outside of the Region's jurisdiction;
 - d) Amend section 12 of the Code of Conduct for Members of Council and Local Boards to include a provision discouraging Members of Council from fraternizing or engaging with members of the gallery while Council or Committee is in session;
 - e) Amend Section 9 of the Procedural By-law, in accordance with the Procedural By-law Review Committee's recommendation, to include a provision that members of the public, including delegates, are not permitted to have signs, props, placards or flags of any kind at meetings of Regional Council or its Committees;
 - f) Amend Section 9 of the Procedural By-law to include a provision prohibiting members of the public from applauding, heckling, making other audible demonstrations of support or opposition or engaging in conversation or other behaviour which may be considered to be disruptive, inconsiderate, disrespectful or intimidating to others.
 - g) Amend section 11 of the Procedural By-law to include a provision that any correspondence submitted by a member of the public regarding the conduct of a Councillor(s) shall not be placed on a Council or Committee agenda and the

member of the public shall be directed to address the concern(s) through the established Code of Conduct complaint process; including that anonymous communications will not be forwarded to Council Members or Regional staff and will not be retained by the Clerk.

Key Facts

- As directed, the purpose of this report is to provide Regional Council with recommendations based on both the contents of the Integrity Commissioner's (IC) April 25, 2024, confidential training session, as well as an environmental scan that was conducted to gather best practices regarding the management of agendas and decorum of public members attending Council and Committee meetings.
- The IC's training session was requested by Council as a response to the challenges that were experienced during the Regional Council meeting held January 25, 2024.
- The IC's presentation contained a thorough review of the events of the January 25 meeting along with suggestions to help strengthen Council's procedural policies and Code of Conduct with the goal of avoiding a recurrence of the circumstances that surrounded the January meeting.
- This report provides Council with specific recommendations for changes to the Procedural By-law and the Code of Conduct for Members of Council and Local Boards.
- The IC's presentation dealt with other items regarding the safety of councillors, respect for staff and interactions with contracted security staff; while important, these items will be addressed in a separate report in the future.

Financial Considerations

Given that the changes being recommended in this report pertain to matters of procedure and conduct, there is no direct financial implication as a result of Council implementing the recommended changes.

Should Council approve the recommendations found here, staff would post appropriate signage outside Council Chambers to ensure public members attending meetings are informed of the expectations. While this would carry a nominal fee, it would be covered within previously approved operational budgets.

Analysis

The January 25, 2024, meeting of Regional Council was considered by many to be an exceptionally challenging meeting that revealed numerous opportunities to strengthen the Region's policies and procedures in the interest of more efficient meetings, stronger agenda management and more appropriate decorum from both elected officials and members of the public who were observing the meeting from the gallery.

To assist Council in making the necessary changes to its practices, the IC was called upon to do a thorough review of the January meeting and bring back recommendations for Council's consideration. As part of this review, the IC examined video from the meeting, interviewed individual councillors, met with relevant senior staff and reviewed media coverage.

Following the IC's presentation, Council directed staff to provide a report for the July 25, 2024, meeting that contained the following:

- a. A summary of the Integrity Commissioner's recommendations from the April 25, 2024, training session;
- b. Options for implementation (including suggested amendments to the Procedural By-Law, Code of Conduct and any other relevant policies); and
- c. An environmental scan of best practices for consideration that may assist Council in the management of agendas and general decorum.

This report is a summation of staff's efforts to present Council with recommendations for implementation in the hopes of avoiding a repeat occurrence of the events of the January meeting.

Summary of the Integrity Commissioner's Recommendations

The following is a high-level summary of the recommendations that were provided to Council by Mr. Maynard, Integrity Commissioner. As stated by the IC during his presentation, Council is a self-governing body and decides what is appropriate for their agendas and how it will conduct its business. In this way, the IC's recommendations reflect the will of council. Note: given the format of the IC's presentation, the language used here is not verbatim but rather a synopsis capturing the general tone of the IC's recommendations.

1. Council should define “core business” and take steps to limit “unusual” and “non-core” motions. Council should respect jurisdiction, “both up and down”.
2. Council should consider the implementation of procedural rules mandating a seconder be identified for “non-core” motions before they are placed on the agenda. Taking this step will ensure that all items on the agenda have a chance to make it to floor for debate, avoiding the potential to disappoint delegates who have registered to speak.
3. A Councillor moving a motion should collaborate with their seconder to ensure there is some consensus that such a motion is warranted before bringing it to the floor.
4. Councillors should ensure they respect the Code of Conduct by directing their full attention to the meeting while Council and Committee is in session. Councillors should not be distracted or interacting with members in the gallery, including leaving the Council Chamber or standing in the gallery.

The Integrity Commissioner provided a variety of other advice for Council’s consideration during the confidential training session. This report deals only with the actionable procedural recommendations found in his presentation.

Making Changes to the By-law and Enforcement

The Procedural By-law is an important document that provides a framework which ensures meeting order and efficiency, promotes transparency, defines roles and responsibilities, standardizes decision making and enhances governance. Additionally, the Procedural By-law is a legal document that guides the conduct of meetings and ensures compliance with municipal and provincial laws.

As detailed by the IC, the rules set out in the Procedural By-law are both developed and adopted by council. When changes are made to this document, Council collectively agrees that their meetings, as well as the conduct of members and those attending the meeting, will now be held to that new standard. Generally speaking, municipal councils in Ontario are self-governing bodies.

The recommendations for implementation presented here, as requested by Council, should not only be seen as a new standard that reflects the current will of the body, but also as a set of “tools” that council may implement to help monitor and regulate the

conduct of council and the public, as well as the flow of meetings. In short, while staff are providing these recommendations, ultimately the responsibility to enforce the new standards will reside with Council.

Recommended Changes to the Procedural By-law

To implement the IC's recommendations, staff suggest Council consider the following changes:

1. Defining Jurisdiction

Based on the recommendation of the IC, staff recommend adding the following definition under section 1.1 of the Procedural By-law:

“Jurisdiction means” the scope of authority and governance granted to a municipality, encompassing the powers, duties, and responsibilities as outlined in the Municipal Act, 2001. This includes but is not limited to, local by-laws, public services, infrastructure, and regulatory matters within the geographic boundaries of the municipality, as specified under the Municipal Act, 2001, S.O. 2001 (see sections 10.2, 11.2, 11.3,.etc.)

Municipalities are “creatures of the province” and generally can only do what they have been authorized to do by the provincial government. If a municipality acts on something it does not have statutory authority over, or that is not within its authority, the courts could quash the action as being “ultra vires” (beyond the powers of the municipality). There have been several challenges of municipal by-laws as it relates to items that are outside of a municipality's jurisdiction.

While some issues may resonate deeply with Council and residents, municipalities are still bound by the legislation that governs their governance and should be mindful of this when putting forward motions that stray from the scope and authority granted by the province. AMO has stated that “the job of municipal councils is to make decisions about municipal financing and services.”

2. Mandatory Secunder Identified for Motions Outside of Regional Council's Jurisdiction/Encourage Consultation with Staff

Aligned with the IC's presentation, staff are recommending the following amendment to section 19 of the Procedural By-law:

Motions outside the Niagara Region's jurisdiction

- (a) All motions outside the Regional Council's core jurisdiction must have a mover and seconder identified prior to being placed on the agenda*
- (b) Members wishing to move a motion outside the Regional Municipality's jurisdiction should consult with the Chief Administrative Officer and Regional Clerk prior to requesting the motion be placed on the agenda*

While it is a suggested best practice to collaborate with Council colleagues on potential motions a Councillor wishes to bring forward, there have been times when a motion is brought forward for Council where a seconder has not yet been identified. Not having a seconder brings the risk that a motion may not get a seconder and therefore not make it to the floor for debate. Collaborating with a seconder ensures that anyone attending the meeting as a delegation will be speaking to an item that should be put on the floor for debate. Moreover, having a seconder identified in advance ensures that the contents of the motion have been reviewed and scrutinized by at least one other Member of Council prior to being added to an agenda.

Consultation with senior staff can also prove to be an invaluable benefit to Councillors who are developing motions to bring forward. Tapping into the collective knowledge and expertise of staff can help ensure that members are making informed decisions and considering all their options to effectively address the needs and concerns of their constituents. While this is true of all motions, when a member is considering an item that would be considered outside the Region's core jurisdiction or mandate, the benefits of consultation with staff are even more pronounced.

3. Limiting fraternization and engagement with the Public Gallery

To satisfy the IC's suggestions regarding mutual respect between all members of Council, and to avoid the appearance of bias or a perceived conflict of interest, staff are recommending the following be added to section 5 of the Code of Conduct:

In carrying out their duties, Members shall:...refrain from conversing or fraternizing with members of the public or delegates in the gallery while Council or Committee is in session. This includes leaving the Council Chamber to engage with members of the public or standing in the gallery while Council or Committee is in session.

In accordance with the Code of Conduct for Member of Council and Local Boards, Members are to observe and act with the highest standard of ethical conduct and integrity and are expected to perform their functions with honesty, integrity, accountability, and transparency. Interacting with members of the public in the gallery while Council or Committee is actively considering a matter may lead to a perception of bias regarding the decision and be viewed as disrespectful.

When deciding a matter, Council should weigh all the facts and opinions being presented and process that information with an open mind. Appearing to personally support a specific side of an issue, or individuals or groups engaging in disorderly conduct, may be viewed as a breach of decorum or a demonstration of bias regarding a decision. Based on the feedback collected by the IC, many members feel this behaviour demonstrates a lack of respect for the Council decision making process, other Councillors, Staff and members of the public.

Perhaps most importantly, Regional Council can be viewed as a quasi-judicial body on numerous occasions, including when hearing appeals under provincial legislation such as the *Planning Act* or the *Development Charge Act*. In these instances, Councillors should make an additional effort to maintain their impartiality and avoid any appearance of a conflict of interest or bias. Failure to do so may compromise the integrity of these proceedings.

Environmental Scan Results

In addition to the recommendations provided by the IC, staff were directed to conduct an environmental scan. This scan included the input of the Procedural By-law Committee (particularly regarding signage) and the review of policies from neighbouring municipalities. The following are a list of recommendations from staff for Council's consideration.

4. Display of Signage in the Council Chamber and Maintaining Decorum

Signage in the public viewing gallery is prohibited by many other legislative bodies, including the City of Toronto, the Legislative Assembly of Ontario (Queen's Park) and at the House of Commons. At its meeting held on June 25, 2024, the Procedural By-law Review Committee approved the following amendment to section 9 of the Procedural By-law:

"Members of the public, including delegates, are not permitted to have signs, props, placards or flags of any kind at meetings of Regional Council or its Committees."

The addition of this wording does not prevent members of the public from utilizing signage or placards during instances of peaceful assembly outside the Council Chamber.

Additionally, the current Procedural By-law is not explicit regarding the types of behaviour that is prohibited in the public gallery. To that end, staff are recommending the following be added to section 9 of the by-law:

"Members of the public may not applaud, heckle, make audible demonstrations of support or opposition, engage in conversation or display any other behaviour which may be considered to be disruptive, inconsiderate, disrespectful or intimidating to others."

The Council Chamber is a place of business where maintaining decorum is crucial to ensuring the business of Council can be conducted effectively. Allowing such distractions (signage, props, disruptive behaviour, etc.) may hinder deliberations and diminish the focus necessary for making informed decisions on behalf of the community. Further, residents attending the meeting deserve to observe Council's proceedings in a setting that is free from distractions, obstructed views or unwarranted interference.

5. Strengthening Policies Regarding Correspondence

Following the January meeting, some members of the public sent correspondence to the Regional Clerk directly alleging that specific councillors were in violation of the Code of Conduct. It was staff's understanding that those creating the correspondence wanted to see these letters included on the public agenda.

Section 223 of the *Municipal Act, 2001*, states that it is the role of the Integrity Commissioner to apply a council's Code of Conduct and to advise on any penalties. Given these stipulations, it would be inappropriate for council to debate complaints about the conduct of a Councillor without that Member being afforded due process and the consideration of a fulsome investigation into any alleged violations. To this end, staff are recommending the following language be included in section 11 of the Procedural By-law:

Any correspondence submitted by a member of the public regarding the conduct of a Councillor(s) shall not be placed on a Council or Committee agenda and the member of the public shall be directed to address the concern(s) through the established Code of Conduct complaint process.

Additionally, staff are recommending that all communications and correspondence being placed on the agenda or sent to councillors be from a legitimate source. Staff are recommending that the following language be added to section 11 of the Procedural By-law:

All communications and correspondence must:

- (a) be delivered to the Clerk in person or by mail, e-mail or fax;*
- (b) be addressed to Council, a Committee or to the Clerk;*
- (c) be legible;*
- (d) include the name and the mailing address or telephone number of the author*
- (e) be in a reproducible format; and*
- (f) not be defamatory or contain inappropriate content or offensive language.*

Correspondence may form part of an agenda and will be considered a public document.

Anonymous communications will not be forwarded to Council Members or Regional staff and will not be retained by the Clerk.

Commentary: Council Chamber Technology – Request to Speak List

A further recommendation from the IC related to a review of the Council Chamber technology with respect to the "Request to Speak list". As some members expressed concern with the administration of the list during the January 25 meeting this commentary will serve as an overview of the "request to speak" process.

For those Members attending Council or Committee in person, the speaker's list is opened by Clerk's staff during a meeting when an item is put on the floor or there is an opportunity for Members to speak (i.e. Other Business). Members can add themselves to the list by pressing the applicable button at their Council seat. A member can only get on the list once it is opened by Clerk's staff and the list is determined by whichever Members press the button first.

Those Members participating by Zoom are added to the list by Clerk's staff in the order that their hands appear on Zoom. If Members have already spoken to the matter, they cannot add themselves to the speaker's list again as the Procedural By-law only provides Councillors the opportunity to speak a single time on any given item at Council.

Additionally, an amendment triggers a separate speakers list to be opened. If Members are wanting to speak to the amendment, they must press the "Join Amend" list. Often this causes confusion as Members are unclear as to why their names are not showing on the list.

An update of the technology in the Council Chamber was approved as part of the 2024 budget and this issue has been raised with the consultant to review. It is anticipated the update will be taking place in the early fall.

At any time, Members can reach out to Clerk's staff for assistance with questions regarding any of the technology in the Council Chamber.

Alternatives Reviewed

The policies of many communities across Ontario were examined as part of this process. The suggestions found here represent what staff believe to be the most relevant solutions based on Council's motion and the IC's presentation.

Relationship to Council Strategic Priorities

The recommendations found in this report are responsive to Council's Strategic Priority of creating a more effective region.

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