



Hamilton

REPORT 12-005
GOVERNANCE REVIEW SUB-COMMITTEE
Tuesday November 26, 2012
10:00 a.m. Room 193
Hamilton City Hall

Present: Councillor R. Powers, Chair
Councillors B. Clark, R. Pasuta

**Absent with
Regrets:** Councillor M. Pearson – City Business
Councillor T. Whitehead – City Business

**THE GOVERNANCE REVIEW SUB-COMMITTEE PRESENTS REPORT 12-005 AND
RESPECTFULLY RECOMMENDS:**

**1. Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide)
(Item 4.1) (Attached as Appendix “A”)**

That Information Report CL12010, respecting Disclosure of Expenses of Council and Senior Staff, be received.

**2. Review of Process for Private and Confidential Reports (CL12006) (City
Wide) (Item 4.2) (Attached as Appendix “B”)**

- (a) That the City Clerk be directed to amend the City of Hamilton Agenda Template, as attached in Appendix “B”, for all Committee and Council Agendas, to reflect under the Private and Confidential Section, the reasons relied on under the Ontario Municipal Act and City’s Procedural By-law, for which Committee or Council will consider a particular matter in Closed Session;
- (b) That staff investigate options for securing confidential documents and reports.

**3. Electronic Recording of Closed Session Meetings (CL12005) (City Wide)
(Item 4.3) (Attached as Appendix "C")**

That Information Report CL12005, respecting the Electronic Recording of Closed Session Meetings, be received.

**4. Quorum at Council and Standing Committees (City Wide) (LS12030)
(Outstanding Business List Item) (Item 4.4) (Attached as Appendix "D")**

That Information Report LS12030, respecting Quorum at Council and Standing Committees, be received.

**5. Workshop on Pecuniary Interest and Declarations of Interest (Other
Business)**

That a General Issues Committee educational workshop be held respecting pecuniary interest and declarations of interest for members of Council.

**6. Electronic Recording of Closed Session Meeting, Legal Implications (LS12033)
(City Wide) (Item 6.1) (Attached as Appendix "E")**

That Report LS12033 respecting Electronic Recording of Closed Session Meeting, Legal Implications, be received and it remain confidential.

FOR THE INFORMATION OF COMMITTEE:

(a) CHANGES TO THE AGENDA (Item 1)

ADDED PRIVATE AND CONFIDENTIAL

**(i) Electronic Recording of Closed Session Meeting, Legal Implications
(LS12033) (City Wide)**

The agenda was approved as amended.

(b) DECLARATIONS OF INTEREST (Item 2)

None

(c) APPROVAL OF MINUTES (Item 3)

(i) October 30, 2012

The minutes of the October 30, 2012 Governance Review Sub-Committee meeting, were approved.

(d) DISCUSSION ITEMS (Item 4)

(i) Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide) (Item 4.1)

Rose Caterini, City Clerk, gave a brief overview of what some other municipalities are doing with respect to expense disclosure. The Committee discussed ways in which disclosure could be done and time lines for implementation. The Committee also discussed the staffing requirements, and utilizing Councillor's assistants to have the information posted.

Staff was directed to develop a policy for the proactive disclosure of expenses by members of Council and Senior Management Team, for implementation in early 2014, and to include the following:

- (i) Standard format of disclosure for use on the City's website;
- (ii) Standards respecting the frequency of updates;
- (iii) Consideration of staffing requirements and budget implications;

(ii) Review of Process for Private and Confidential Reports (CL12006) (City Wide) (Item 4.2)

Committee discussed alternative methods in which confidential documents could be secured.

That the staff recommendation be amended by adding section (b) to read as follows:

- (b) That staff investigate options for securing confidential documents and reports.

Please refer to item 2 for disposition

(iii) Electronic Recording of Closed Session Meetings (CL12005) (City Wide) (Item 4.3)

The Committee discussed the recording of closed session minutes.

Staff was directed to report back, respecting a policy for the recording of closed session meetings.

Please refer to item 3 for disposition

(iv) Quorum at Council and Standing Committees (City Wide) (LS12030) (Outstanding Business List Item) (Item 4.4)

The Committee discussed the causes for a loss of quorum, and ways in which they can be aided.

Please refer to item 4 for disposition

(e) OTHER BUSINESS (Item 7)

(i) Standing Committee Membership (New Business)

Membership of Standing Committee will be reviewed, and modified, if needed at a future meeting of the Governance Review Sub-Committee.

(ii) Outstanding Business List (New Business)

The following items were removed from the Outstanding Business List as the items are complete:

- (i) Item A – Disclosure Policy for Expenses Submitted by Elected Officials and Senior Staff
- (ii) Item C – Review of Process for Private and Confidential Reports
- (iii) Item E – Effects of the Conflict of Interest Act if quorum is lost at Committee meetings

The Governance Review Sub-Committee meeting, adjourned at 1:50 p.m.

Respectfully submitted,

Councillor R. Powers, Chair
Governance Review Sub-Committee

Christopher Newman
Legislative Coordinator



INFORMATION REPORT

TO: Chairman and Members of the Governance Review Sub-Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: November 26, 2012	
SUBJECT/REPORT NO: Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide)	
SUBMITTED BY: Rose Caterini City Clerk Corporate Services	PREPARED BY: Lisa Barroso Manager, Records & FOI Ext. 2743
SIGNATURE:	

Council Direction:

In July 2011, Council passed a motion regarding the disclosure of expenses of elected officials and senior staff. The issue was then referred to the Governance Review Sub-Committee for further discussion and review.

Information:

In follow-up to the motion, the Assistant Commissioner of the Information & Privacy Commission was invited to Hamilton to speak to a group of staff and elected officials about their proactive approach to the routine disclosure of expenses and staff subsequently provided an overview to the Governance Review Sub-Committee in November 2011. Following this, the item was moved to the outstanding business list awaiting a report from the City Manager's Office respecting the Open Data initiative.

Recently, staff undertook to research the practices of other municipalities in regards to the routine disclosure of expenses for elected officials and senior staff. The following Municipalities pro-actively and routinely disclose office expenses to enhance transparency and accountability by establishing policies.

City of Ottawa

Expense reports are prepared on a monthly basis for each Member of Council and each member of the City's Executive Committee which includes some senior staff (i.e. City Manager, Deputy City Manager, City Clerk, City Solicitor and City Treasurer). The reports are broken down into a series of categories for ease of reference. An itemized

SUBJECT: Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide) - Page 2 of 5

report is prepared showing expenses related to hospitality, donations and sponsorships, special events and travel. Receipts/Invoices are not provided. The following provides a link to the web site and a sample report form which is standard for all members and staff:

http://ottawa.ca/en/city_hall/councilcommittees/mayor_council/accountability/officeexpenses/disclosure2012/index.htm

January 2012

Cost Elements	(Month) Actuals	Year to date
Special Events, Community Receptions and Hospitality (itemized)	412	412
Coffee, tea, juice, creamers, etc.	45	
Coffee, tea, juice, creamers, etc.	135	
Coffee, tea, juice, creamers, etc.	19	
Coffee, tea, juice, creamers, etc.	105	
Coffee, tea, juice, creamers, etc.	19	
Tickets for: Taste of the Glebe	90	
Donations, Sponsorships and Memberships (itemized)	0	0
City Related Business Travel (itemized)	0	0
Constituent Communications and Web Services (totalled)	2,983	2,983
Includes web sites, printing, mailing, advertising		
External Services (totalled) / Services externes (total)	30	30
Includes office assistance and consulting services		
Materials, Office Supplies and Related Services (totalled)	2,626	2,626
Includes office, computer supplies, facility rentals		
Staff Costs (totalled)	40,570	40,570
Recoveries	0	0
Totals	46,621	46,621
Total Budget		778,000

SUBJECT: Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide) - Page 3 of 5

City of Toronto

The City of Toronto began disclosing expenditures of elected officials (staff not included) in 2008. Detailed office expense records are posted to their web site quarterly. On the detailed expense report site you will find information by Councillor name, ward and category (travel, postage, equipment, etc). The site provides the total spent up to the previous quarter (year-to-date information) as well as copies of invoices. The following provides a link to the web site and a sample expense report form:

http://www.toronto.ca/city_council/expense_reports.htm

Year: 2012
Ward: 1 -

Councillor:

Category	Amount	
Communication expense category was previously titled Printing, Postage & Courier.		
Amounts shown are net of HST rebates.		
Staff Salaries Budget Overage	\$ 0.00	
Office Equipment and Supplies	\$ 212.31	Invoices
Transportation, Kilometrage & Parking	\$ 882.67	Invoices
Communication	\$ 7,621.18	Invoices
Telecom Services	\$ 550.02	Invoices
Constituency & Business Meeting	\$ 0.00	
Advertising & Promotion	\$ 106.80	Invoices
Professional & Technical Services	\$ 0.00	
Conferences & Office Travel	\$ 0.00	
City Hall/Civic Centre Rent & Constituency Office Expenses	\$ 0.00	
Other Expenses	\$ 100.00	Invoices
Other Recoveries	\$ 0.00	
Donations Received for Community Events	\$ 0.00	
Expenses Using Personal Funds	\$ 0.00	

SUBJECT: Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide) - Page 4 of 5

City of Mississauga

Expense summaries are provided semi-annually and annually for elected official by ward in a summary report format (senior staff not included). The following provides a link to the web site and an excerpt from the summary report:

<http://www.mississauga.ca/portal/cityhall/councilexpenses>

**EXPENDITURE DETAIL
Mayor and Members of Council
January 1, 2012 to June 30, 2012
Ward 1 – 28201**

A/C	DESCRIPTION	EXPENSES
715101	MEMBERSHIPS/DUES	
715101	TOTAL:	0.00
715103	CONFERENCES	
	Making Waves conference MAR	646.85
715103	TOTAL:	646.85
715201	COMMUNICATIONS - NEWSLETTERS	
715201	TOTAL:	0.00
715206	TELEPHONE AND LINE CHARGES	
	Rogers Blackberry - Councillor JAN	51.49
	Rogers Blackberry - Councillor FEB	50.90
	Telus iPad – Councillor	70.02
	Rogers Blackberry - Councillor MAR	293.31
	Rogers Blackberry - Councillor APR	56.36
	Rogers Blackberry - Councillor MAY	75.88
	Rogers Blackberry - Councillor JUN	64.82
715206	TOTAL:	662.78
715222	COMMUNICATIONS	
	Internet - home office JAN	51.89
	Postage FEB	0.61
	Internet - home office	51.89
	Postage MAR	145.27
	Postage APR	2.58
	Postage JUN	712.50
	Print requisition 182276 - Lakeview Community letter	369.00
	Print requisition 182280 - Port Credit Community letter	118.00
	Print requisition 182278 - Westacre Pool Community Letter	336.00
	Print requisition 182279 - Orchard Heights Community letter JUN	247.00
715222	TOTAL:	2,034.74
715405	BUILDING RENTAL	
	Room rental - Dufferin Peel District School Board MAR	219.37
	Room rentals - Community Services	550.01
	Room rental - Port Credit Royal Legion APR	100.00

SUBJECT: Disclosure of Expenses of Council and Senior Staff (CL12010) (City Wide) - Page 5 of 5

715405		TOTAL:	869.38
715526	EQUIPMENT PURCHASES - OFFICE		
715526		TOTAL:	0.00
715531	EQUIPMENT REPAIRS/PARTS		
715531		TOTAL:	0.00
715785	SOUVENIRS		
	Souvenirs JAN		33.58
	Souvenirs FEB		116.46
	Souvenirs MAR		60.48
	Souvenirs APR		122.11
	Souvenirs JUN		313.75
715785		TOTAL:	646.38
715810	OFFICE SUPPLIES AND EXPENSES		
	Photocopies JAN		1.48
	Photocopies MAR		56.56
	Photocopies APR		1.04
	Photocopies MAY		1.08
	Photocopies JUN		0.04
715810		TOTAL:	60.20
715888	OTHER EXPENSES (SUNDRY)		
	Floral expression - sympathy MAR		162.82
	Fundraiser - Mississauga Waterfront festival, 1 ticket APR		125.00
715888		TOTAL:	287.82
	WARD 1 SUMMARY OF EXPENSES		
		YTD ACTUALS:	5,208.15
		2012 BUDGET:	26,800.00
		YTD BALANCE:	21,591.85

Summary of Requirements:

The municipalities contacted above set their disclosure of expenses through written policy not by by-law. Should the City of Hamilton decide to proactively disclose expenses of Elected Officials and Senior Staff the following requirements should be considered and discussed with the Senior Management Team:

- a) develop a policy regarding the disclosure of expenses;
- b) commit to a standard format in presenting this information on the City's web site (this decision should consider how the expenses are to be categorized and whether or not copies of invoices will be linked to expenses);
- c) decide on how often this information will be reported (i.e. monthly, quarterly, semi-annually);
- d) consider staffing requirements to prepare, post and maintain the expenses on the City's web site;
- e) consider possible budget implications of support staff required to process and post the information routinely.



CITY OF HAMILTON

CORPORATE SERVICES
City Clerk's Division

TO: Chair R. Powers Members of Governance Review Sub-Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: November 26, 2012	
SUBJECT/REPORT NO: Review of Process for Private and Confidential Reports (CL12006) (City Wide)	
SUBMITTED BY: Rose Caterini City Clerk Corporate Services, Clerk's Division	PREPARED BY: Mary Gallagher, Deputy Clerk ext. 4304
SIGNATURE:	

RECOMMENDATION

That City Clerk's be directed to amend the City of Hamilton Agenda Template, as attached in Appendix "B", for all Committee and Council Agendas, to reflect under the Private and Confidential Section, the reasons relied on under the Ontario Municipal Act and City's Procedural By-law, for which Committee or Council will consider a particular matter in Closed Session.

EXECUTIVE SUMMARY

City Council directed the review of how the City of Hamilton processes its Confidential Reports. This report addresses the current process and suggested recommendation for consideration.

Alternatives for Consideration – Not applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: None

Staffing: None

Legal: None

HISTORICAL BACKGROUND (Chronology of events)

Hamilton City Council at its meeting of February 8, 2012 approved the following:

8.1 Review of Process for Private and Confidential Reports

That the Governance Review Sub-Committee be requested to review the following and report to the Audit, Finance and Administration Committee:

- (a) The format in which confidential reports are prepared for Committee/Council;
- (b) The process in which Private and Confidential items are distributed to Committee/ Council;
- (c) The role of the Clerk as outlined in the City's Procedural By-law subsection 9.6, which reads as follows:

"9.6. The Clerk shall advise the Mayor or Chair, if in his or her opinion, a matter or portion of a matter being discussed in a meeting that is closed to the public is not procedurally appropriate in accordance with section 239 of the Act and section 8 of this By-law."

POLICY IMPLICATIONS

None

RELEVANT CONSULTATION

Senior Management Team
Legal Services

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

(a) Current Confidential Report Process

Currently, City staff utilize a Private and Confidential report template accessed through the City's Document Formatter.

The report writer is prompted and must indicate what section(s) of the Municipal Act and City's Procedural By-law he/she is relying on in order that the report may be deemed confidential and not for public disclosure.

Confidential Reports are then forwarded to Clerks staff and the reasons for moving into closed session are reviewed, and confirmed.

Although the report writer is the subject expert in the writing of the report, the Clerk will advise on the appropriateness of moving into Closed Session based on the exemptions in the Municipal Act and Procedural By-law for closed meetings.

Report Writers are also required to indicate in the recommendation section of the confidential report if any portion(s) of the report may become public following Council's consideration of the matter. This may be easily accommodated by providing that information in an Appendix which is attached to the report. Following Council approval, the Appendix is released publicly and uploaded to the City's Website.

(b) Distribution of Confidential Reports

Confidential Reports are listed on Standing Committee and Council Agendas under the Private and Confidential portion of the agenda by title only, (see Appendix "A") and are copied on red paper to deter photocopying the confidential information.

The distribution of confidential reports is tightly regulated by the City's Clerk's office. Only the Legislative section who receive the confidential reports make copies for distribution.

Confidential Reports are only distributed to Members of Council, Members of Senior Management Team and to the senior staff in the City Manager's office. They are placed in clearly marked confidential envelopes and delivered with the Standing Committee or Council Agendas.

(c) Role of the Clerk during Closed Session meetings

The Municipal Act governs when and how a Municipality may close a meeting to the Public.

Prior to a confidential report being considered by Committee or Council, the Committee Clerk includes within the Chair's procedures, which are read aloud in public session, the reasons for moving into Closed Session.

Once the motion has been approved and committee is properly in Closed Session, the Committee Clerk records the names of those in attendance including Members of Council and Staff, and records by motion any approved staff direction.

In addition, the role of the Clerk as outlined in Section 9.6 of the City's Procedural Bylaw, is *"to advise the Mayor or Chair, if in his or her opinion, a matter or portion of a matter being discussed in a meeting that is closed to the public is not procedurally appropriate in accordance with Section 239 of the Act and Section 8 of the City's Procedural Bylaw."*

The Clerk's role is strictly advisory in nature and the Clerk does not have any legislated power or authority to stop the proceedings of any meeting.

If the Clerk provides advice that a matter is not procedurally appropriate to be in closed session, the final determination to either remain in closed session or to reconvene in Open Session rests with the Chair and the Committee/Council.

The Clerk will reflect within the Closed Session minutes that the advice was provided to members of Council.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Make no changes to the Agenda Template. Currently, the public have to attend the Committee or Council meeting to hear the Chair announce the reasons publicly as to why a matter will be considered in closed session.

**SUBJECT: Review of Process for Private and Confidential Reports (CL12006)
(City Wide) - Page 5 of 5**

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability,
3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development,
6. Environmental Stewardship, 7. Healthy Community

This new template would assist in increasing the transparency of Committee/ council proceedings in the City of Hamilton.

APPENDICES / SCHEDULES

Appendix "A" to Report CL12006 - current Agenda Template
Appendix "B" to Report CL12006 - revised Agenda Template

CURRENT AGENDA TEMPLATE

1. CHANGES TO THE AGENDA

2. DECLARATIONS OF INTEREST

3. APPROVAL OF MINUTES OF PREVIOUS MEETING

4. DELEGATION REQUESTS

5. CONSENT ITEMS

6. PUBLIC HEARINGS/DELEGATIONS

7. PRESENTATIONS

8. DISCUSSION ITEMS

9. MOTIONS

10. NOTICES OF MOTION

11. GENERAL INFORMATION/OTHER BUSINESS

12. PRIVATE AND CONFIDENTIAL

12.1 Settlement of Court Action No. 2306/03 – Personal Injury Claim –
HECFI

13. ADJOURNMENT

REVISED AGENDA TEMPLATE

- 1. CHANGES TO THE AGENDA
- 2. DECLARATIONS OF INTEREST
- 3. APPROVAL OF MINUTES OF PREVIOUS MEETING
- 4. DELEGATION REQUESTS
- 5. CONSENT ITEMS
- 6. PUBLIC HEARINGS/DELEGATIONS
- 7. PRESENTATIONS
- 8. DISCUSSION ITEMS
- 9. MOTIONS
- 10. NOTICES OF MOTION
- 11. GENERAL INFORMATION/OTHER BUSINESS
- 12. PRIVATE AND CONFIDENTIAL

12.1 Settlement of Court Action No. 2306/03 – Personal Injury Claim – HECFI

This matter is proposed for consideration in closed session further to the Ontario Municipal Act Section 239/City's Procedural By-law Section 8.1 (e) - Litigation or potential litigation, including matters before administrative tribunals, affecting the City

and

Section 8.1 (f) Advice that is subject to solicitor-client privilege, including communications necessary for that purpose

- 13. ADJOURNMENT



INFORMATION REPORT

TO: Chair R. Powers Members of Governance Review Sub-Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: November 26, 2012	
SUBJECT/REPORT NO: Electronic Recording of Closed Session Meetings (CL12005) (City Wide)	
SUBMITTED BY: Rose Caterini City Clerk Corporate Services, Clerk's Division	PREPARED BY: Mary Gallagher (905) 546-2424 ext. 4304
SIGNATURE:	

Council Direction:

7.1 Recording of Closed Session Meetings

That the City Clerk be directed to investigate the possibility of recording the Closed Session Meetings of Committee and Council and provide a report to the Governance Committee outlining any implications with respect to implementing such a process.

For the Information of Committee:

Current Process

The *Municipal Act, 2001* determines when and how a meeting may be closed to the public. Following the approval of a resolution to move into Close Session, by Committee or Council, the City Clerk's legislative staff carry out the following to ensure that the Council Chambers is properly secured during closed session deliberations:

1. Activate In Camera Controls on the Televic System to cease operation of all electronic recording within the Chambers. This includes all Sire web streaming, Cable 14 broadcast and our internal Centrex telephone access to ext. 8550.
2. Activate music in the foyer to block any sound travelling from the Council chambers to the foyer

SUBJECT: Electronic Recording of Closed Session Meetings (CL12005) (City Wide) - Page 2 of 4

3. Lower blackout screens to prevent presentations on screen to be viewed from City Hall Forecourt;
4. Lower entrance blinds to obscure public viewing and assist with blocking sound from chambers to the foyer
5. Close doors at East and West stairwell in council chambers
6. Record the proceedings of closed session meetings in Word directly into a secured folder. The Minutes are then printed, copied onto red paper, and distributed in sealed Private and Confidential envelopes to Members of Council and Senior Management Team with the next Committee or Council Agenda.

Verbatim discussion is not recorded in any committee or council proceedings, including Closed Session deliberations.

The Closed Session Minutes include attendance of those present during the meeting, and any staff directions provided by motion.

The Minutes meet the only statutory requirement with respect to the keeping of a record of Council and Committee meetings, paragraph 228(1)(a) of the *Municipal Act, 2001*:

228. (1) A municipality shall appoint a clerk whose duty it is,

- (a) to record, without note or comment, all resolutions, decisions and other proceedings of the council;

Other Municipalities

A review was conducted to determine if any municipalities electronically record closed session meetings. The sampling included the Cities of Ottawa, Toronto, Mississauga, Windsor, Halton and London. Of this sampling, none electronically record Closed Session meetings.

What to consider when electronically recording Closed Session Meetings

1. Official Record

The Minutes recorded by Clerk's staff are the **official** record of the proceedings and are signed by the Mayor and Clerk (meetings of Council) or the Chair and Legislative Coordinator (Standing Committees).

Minutes are not recorded verbatim.

2. Closed Session Proceedings

Members of Council and staff would need to be mindful that everything being said during a Closed Session meeting is being electronically recorded and once recorded cannot be edited.

An electronic recording would not be a complete, accurate record of each Closed Session unless each member of council and staff who is speaking is identified prior to speaking and only one member of council or staff speaks at any time.

To ensure a complete, accurate record that reflects what each speaker has said and that could be transcribed upon request, would require the services of a court reporter with the necessary equipment which would be very costly and the cost would vary depending on the length of the closed session meeting.

It may be that electronically recording Closed Sessions, together with the use of microphones as discussed below, would discourage members of Council from have a full and frank discussion of a matter.

3. Use of Microphones during meetings

While the Council Chambers is equipped with microphones, the comfort level with some Council members in using them during closed session meetings is not at 100%. The concern being, that if the microphones are being used, regardless of the attempts to mask the sound, that the sound may still carry to the outside foyer.

In recording a meeting electronically, the use of microphones will be mandatory in order to pick up the speakers around the Council and SMT tables.

Once the microphones are in use, they may pick up “sidebar” conversations as they do now in Open Session. These would, of course, form part of the electronic recording.

4. New equipment required to electronically record Closed Session

Our Chief Technology Architect in Information Services informs us that while we do have access to installed XLR audio jacks in the media seating area on the west side of the Council Chambers, a recording device that has an XLR connector and removal media would be required, together with confirmation that the audio is still available when Clerks disengages the other electronic devices

SUBJECT: Electronic Recording of Closed Session Meetings (CL12005) (City Wide) - Page 4 of 4

within the chambers such as the feed to the live web stream, Cable 14 and the internal 8550 extension.

If it is found that the disengaging of the electronic devices would not allow access to the audio jack, then we would need to investigate wiring changes in the Chambers.



INFORMATION REPORT

TO: Chair and Members, Governance Sub-Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: 26 November 2112	
SUBJECT/REPORT NO: Quorum at Council and Standing Committees (City Wide)/LS12030 (Outstanding Business List Item)	
SUBMITTED BY: Ron Sabo Acting City Solicitor Legal Services Division	PREPARED BY: Lisa Pasternak Senior Solicitor 905-546-2424, ext 7292
SIGNATURE:	

Council Direction:

At its meeting of April 11, 2012, Council approved the following direction contained in General Issues Report 12-008:

- 9.(b) That legal staff be directed to report to the Governance Review Sub-Committee the effects of the Conflict of Interest Act if a quorum is lost at Committee meetings.

Information:

The *Municipal Act, 2001* (the MA) speaks only to a quorum of Council. Under s. 237(1), the majority of members of a municipal council forms quorum. For Hamilton’s Council, this means nine votes is quorum. For Standing Committees, quorum is set as half of the membership rounded up to the nearest whole number under subsection 5.4 of the Council Procedural By-law.

The following addresses a quorum of Council, but applies to both Council and Standing Committees, with the exception that a lack of quorum at a Standing Committee may be overcome by Council taking up the matter.

It is important to note in considering the issue of quorum that other than a member of Council being prohibited from voting under the *Municipal Conflict of Interest Act* (MCIA) if he or she has a pecuniary interest, a member of Council cannot be required to either vote or not vote.

Members of Council can be divided in six categories with respect to quorum. While these categories are useful for explaining quorum, it should be kept in mind that the status of absent Members of Council – whether he/she is without a pecuniary or non-pecuniary interest or with one or both - will not be established until he/she attends.

“present without a pecuniary or non-pecuniary interest” - voting

“present with a pecuniary interest” – not voting

“present with a non-pecuniary interest” – not voting

“absent without a pecuniary or non-pecuniary interest” – not voting

“absent with a pecuniary interest” – not voting

“absent with a non-pecuniary interest” – not voting

To decide how a matter may proceed when quorum is lost, when there are less than nine votes, a determination should be made as to what has caused the loss of quorum by asking the following questions. The questions would be asked in order, to ensure that matters may proceed in a timely manner.

1. Does the number of those “present with no interest” + the number of those “present with a pecuniary interest” = nine or more?

The first question to ask is if quorum has been lost at a meeting due to those present with a pecuniary interest, as defined in the MCIA. If the answer is that “but for” a member of Council’s pecuniary interest, quorum would not be lost, then the matter can proceed in accordance with the MCIA.

Subsection 7(1) of the MCIA provides that when quorum is lost at a meeting because of a pecuniary interest, the remaining members of Council, down to two, constitute quorum, despite s. 237(1) of the MA. Accordingly, the matter can proceed unless the remaining members are reduced to one or zero.

Subsection 7(2) of the MCIA provides that if the remaining members of Council are reduced to one or zero, the Council can apply to a judge of the Superior Court of Justice for an order to deal with the matter.

If the answer to this first question is “no”, then ask the second question set out below.

Further Considerations:

Members of Council will always be mindful, of course, of ensuring appropriate representation on each question before them, for example, that the Councillor whose Ward is affected is present. It follows that before proceeding with a quorum of two to eight or with an application to a judge of the Superior Court of Justice, consideration should be given to postponing the matter, if the presence of a member of Council who is

“absent without a pecuniary or non-pecuniary interest” would result in a quorum of nine or two respectively later during the same meeting or at a future meeting. Those “absent with a pecuniary interest” or “absent with a non-pecuniary interest” would not vote even if present, so their attendance would make no difference.

If a member of Council wishes advice on his or her pecuniary interest as defined under the MCIA, he or she should seek this advice from outside legal counsel. In-house counsel, who provides advice to Council as a whole, cannot act on behalf of individual members of Council:

. . . it must be remembered at all times that the municipal solicitor is not in a solicitor-client relationship with any individual member of council. His or her duties are to the municipal corporation or local board, which is his or her client. Therefore, a municipal solicitor should not be put in a position of giving advice to any individual member of council.

Aside from the fact that there is no solicitor-client relationship with any member of council, the municipal solicitor must be available at all times to give open and expert legal advice to the municipal corporation, which may or may not share an interest in common with the head of council or any other member in the particular circumstances of any case.

Ontario’s Municipal Conflict of Interest Act – A Handbook, M. Rick O’Connor and George H. Rust-D’Eye

Some municipalities, such as Kingston, have a reimbursement policy for such advice from outside legal counsel. Hamilton does not. Council may wish to consider such a reimbursement policy for individual members of Council.

2. Does the number of those “present without a pecuniary or non-pecuniary interest” + the number of those “absent without a pecuniary or non-pecuniary interest” = nine or more?

The second question to ask is if quorum has been lost due to those “absent without a pecuniary or non-pecuniary interest”. If the answer is that “but for” a member of Council’s absence quorum would not be lost, then the matter can be postponed to later during the same meeting or to a future meeting – perhaps a special meeting if there is a deadline to meet. Again, those “absent with a pecuniary interest” or “absent with a non-pecuniary interest” would not vote even if present, so their attendance would make no difference.

If the answer to this second question is “no”, then ask the third question set out below.

3. Does the number of those “present with a non-pecuniary interest” + the number of those “absent with a non-pecuniary interest” = nine or more?

If the answer to both the first and second questions is “no”, then quorum has been lost due to a non-pecuniary interest, as defined in the Council Code of Conduct (the Code). This is unlikely, as nine members of Council, present or absent, would have to have a non-pecuniary interest.

Further Considerations:

The Code only requires that a non-pecuniary interest be declared and does not bar voting on a matter.

8.2 Under its Accountability and Transparency Policy, the City supports ensuring accountability and transparency in all its actions. Accordingly, in addition to disclosing a pecuniary interest under the *Municipal Conflict of Interest Act*, members of Council shall disclose non-pecuniary interests they have in a matter, either on their own behalf or while acting for, by, with or through another, prior to consideration of that matter at Council or a Committee of Council.

8.3 Examples of types of non-pecuniary interests in a matter to be disclosed under subsection 8.2 include but are not limited to:

- (a) a member of Council being a director or senior officer of an entity, whether or not appointed by Council;
- (b) a member of Council’s family member being a director or senior officer of an entity;
- (c) a member of Council or their family member holding a licence or other permission issued by the City.

8.4 Subsection 8.2 does not apply to a non-pecuniary interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member of Council.

However, it is possible that declaring a non-pecuniary interest in a matter and then voting on it, or even discussing it, could give rise to a complaint to the Integrity Commissioner. If discussing or voting breached one or more of the other provisions of the Code, then a negative finding and, possibly, a reprimand and/or suspension of pay would result.

If nine or more members of Council have a non-pecuniary interest, it may be possible to bring an application to the Superior Court of Justice under Rule 14.05 of the Rules of

Civil Procedure to ask for a determination as to whether or not one or more of the members of Council with a non-pecuniary interest can vote.

Council may wish to ask the provincial government to have the MCI apply to non-pecuniary interests in addition to pecuniary interests, as has been done by British Columbia in its municipal conflict of interest legislation. This would result in section 7 of the MCI applying to both interests, all but eliminating the possibility that Council would be unable to act.