

From: "Mochrie, Paul" <Paul.Mochrie@vancouver.ca>
To: "Direct to Mayor and Council - DL"
Date: 7/11/2022 1:22:07 PM
Subject: Memo: quorum at public hearings and July 5 proceeding
Attachments: memo to MC - quorum at public hearings and Jul 5 2022 proceedings.pdf

Good afternoon Mayor and Council,

The attached memo from the City Clerk provides:

- (1) responses to Councillor Dominato's questions sent via email on July 5, 2022 regarding procedures associated with loss of quorum at Public Hearings; and
- (2) Council with analysis and recommendations on how to proceed with the Public Hearing of July 5, 2022

It is recommended that Council start the Public Hearing on July 21, 2022, at 6 pm with item 6. In order to preserve the validity of the Public Hearing re CD-1 Rezoning: 2009-2037 Stainsbury, it is recommended that item (i.e. Item 5 on the July 5 agenda) be re-advertised and re-started at a future date.

In discussion with the Mayor, we have identified a path for Council to conduct the Public Hearing on the Stainsbury rezoning application before the end of the month, if Council is so inclined. That outcome would require convening a Special Meeting shortly for purpose of confirming Council's approval to schedule an additional Public Hearing date on July 28. Provided that date is confirmed imminently, there would be sufficient time to meet the requirements for advertisement and public notification. As you will recall, this application pertains to City-owned land that is proposed for deployment to create affordable housing.

The City Clerk's team is currently working on the logistics for a Special Meeting and looking at the opportunity to schedule in conjunction with the Public Hearing tomorrow evening. We will confirm those details asap.

Please let me know if you have any questions or concerns regarding this matter.

Best,
Paul

Paul Mochrie (he/him)
City Manager
City of Vancouver
paul.mochrie@vancouver.ca



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̓əm (Musqueam), Sḱwx̱w̱ú7mesh (Squamish), and səliłwətał (Tseil-Waututh) Nations.

MEMORANDUM

July 8, 2022

TO: Mayor and Council

CC: Paul Mochrie, City Manager
Armin Amrolia, Deputy City Manager
Karen Levitt, Deputy City Manager
Lynda Graves, Administration Services Manager, City Manager's Office
Maria Pontikis, Chief Communications Officer, CEC
Anita Zaenker, Chief of Staff, Mayor's Office
Neil Monckton, Chief of Staff, Mayor's Office
Alvin Singh, Communications Director, Mayor's Office
Francie Connell, Director of Legal Services and City Solicitor
Theresa O'Donnell, General Manager, Planning, Urban Design and Sustainability
Jeff Greenberg, Assistant Director, Development/Real Estate, Legal Services
Grant Murray, Assistant Director, Administration, Legal Services
Tina Penney, Deputy City Clerk

FROM: Katrina Leckovic, City Clerk

SUBJECT: Procedures on loss of quorum and recommendations for Public Hearing of July 5, 2022

RTS #: N/A

Dear Mayor and Council,

The purpose of this memo is to provide:

- (1) responses to Councillor Dominato's questions sent via email on July 5, 2022 regarding procedures associated with loss of quorum at Public Hearings; and
- (2) Council with analysis and recommendations on how to proceed with the Public Hearing of July 5, 2022.

Procedures associated with loss of quorum at Public Hearing

A. Lack of quorum within 30 minutes of scheduled Public Hearing start time

In accordance with section 13.17 of the *Procedure By-law*, if a quorum is not present 30 minutes after a Public Hearing is scheduled to start, the City Clerk must read the roll, record the result in the minutes, and declare the Public Hearing cancelled.

B. Loss of quorum during a Public Hearing

The *Procedure By-law* is silent on loss of quorum once a Public Hearing has commenced. Under Robert's Rules of Order, quorum is presumed unless the Chair or a member notices that quorum is no longer present. If the Chair notices that quorum is lost, it is their duty to declare the fact and business should not be conducted until quorum is restored.

In the absence of quorum, any business transacted, except for certain procedural actions, is null and void. Under Robert's Rules, in the absence of quorum, Council may fix the time to which to adjourn, adjourn, recess or take measures to obtain a quorum, such as a motion that absent members be contacted during a recess. Subsidiary and incidental motions (see sections 8.5(b) and (c) of the *Procedure By-law*), questions of privilege, and other motions may also be considered if they are related to these motions or to the conduct of the meeting while it remains without quorum.

Past practice when there is a loss of quorum is to recess the meeting and wait until quorum is restored, at which time the meeting can continue. Typically, this is a brief delay. Robert's Rules provide that for future similar issues, past rulings are persuasive, but not binding. Robert's Rules also provide that if Council is or becomes dissatisfied with a precedent, it may be overruled, in whole or in part, by a later ruling of the Chair or a decision of Council. This will create a new precedent.

C. Confirmation of quorum at an electronic meeting

Section 14.13 of the *Procedure By-law* states that *the Clerk must confirm quorum at an electronic meeting, and each member must enable their video in order to allow for this*. In practice, the Clerk's team monitors electronic participation throughout the meeting and alerts the Chair of the meeting as to loss of quorum. If the Chair notices that quorum is lost it is their duty to declare the fact and business should not be conducted until quorum is restored.

D. Clarification on section 146 of the Vancouver Charter

Section 137(1) of the *Vancouver Charter* says that quorum is 6. Section 146 of the *Vancouver Charter* says that acts done by a quorum of Council are not to be questioned merely because fewer than a full Council participated in a decision. Section 146 also provides a way for the City to seek a court order to address issues about quorum that may arise as a result of one or more Councillors being in conflict of interest. Legal Services does not consider section 146 to be relevant to the issues arising at the Public Hearing on July 5, 2022.

Loss of quorum at the July 5, 2022 Public Hearing – staff analysis and recommendations

Agenda items 1 to 4 were properly considered with decisions rendered during the Public Hearing on July 5, 2022. The two outstanding items are agenda items 5 (CD-1 Rezoning: 2009-2037 Stainsbury Avenue) and 6 (CD-1 Rezoning: 906-982 West 18th Avenue and 907-969 West 19th Avenue). This section of the memo provides a recap/analysis of what transpired with agenda items 5 and 6 on July 5, and staff recommendations on how to proceed with these items.

At approximately 9:02 pm during the Public Hearing of July 5, 2022, the Chair stated that due to the remaining number of speakers on agenda items 5 and 6, item 6 would be considered on July 21, 2022 and further requested that staff inform the speakers and applicant team accordingly. It is important to note that Council had quorum at this time. The reconvene time of 6 pm on July 21, 2022 was also noted by the Chair at the beginning of the meeting. No Council member raised objections to this direction of the Chair and therefore, under the 'Unanimous Consent' provisions in Robert's Rules, agenda item 6 can be properly considered by Council on July 21, 2022.

Unanimous Consent is used for routine business or on questions of little importance to save time. Action in this manner accords with the principle that rules are designed for the protection of the minority and generally need not be strictly enforced when there is no minority to protect. Unanimous Consent does not necessarily imply that every member present is in favour of the proposed action, it may only mean that the opposition simply accepts the proposed action. If there is no objection from Council, the ruling of the Chair would be sustained. Unanimous Consent only applies when Council has quorum.

At approximately 9:50 pm, during speakers on item 5, the Chair declared that quorum was lost and that, as a result, item 5 would continue on July 21, 2022, at 6 pm. No motion to do this was moved or adopted.

At that time there were five Council members present with 2 members in the Council Chamber (Councillors Carr and Wiebe) and 3 members on the Webex (Mayor Stewart and Councillors Swanson and Kirby-Yung). As noted, 6 members of Council are required for quorum.

Staff have considered whether the Chair can adjourn or recess a Public Hearing on their own when quorum is lost. The *Procedure By-law* is silent on the matter. Based on Robert's Rules, it appears that the Chair cannot do this.

As indicated earlier in this memo, Robert's Rules state that when quorum is lost any business transacted is null and void, except certain procedural actions.

Staff notes that the rule of 'Unanimous Consent' is not available due to lack of quorum. The remaining members of Council could have recessed the meeting in accordance with Robert's Rules, but did not do so. As such, the Public Hearing for Item 5 was neither completed nor recessed. To the best of our knowledge, staff has always taken the position that a public hearing must be properly adjourned or recessed, or it needs to start over, including new advertising.

It is recommended that Council start the Public Hearing on July 21, 2022, at 6 pm with item 6. Item 5 needs to be re-advertised and re-started at a future date.

Please contact me with questions in regards to the information presented in this memo.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Leckovic', is positioned below the word 'Sincerely,'.

Katrina Leckovic

City Clerk

604.873.7998 | katrina.leckovic@vancouver.ca