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Subject: Out of Order questions from Council

Greetings Mayor and Council

Toward the end of the committee meeting there were questions from council regarding whether the Motion on Fossil Fuel Divestment was in order. As per the legal analysis below, the motion is in order.

Best

Sadhu

From Law:

We have reviewed the tape on this (and with Katrina) and have interpreted Cllr De Genova's point of order as a request under Section 4.4 and 4.5 (requiring the Chair to rule on a point of order) as well as Section 8.7(a) (Motion out of order) of the Procedure By-law with respect to Part C of the Fossil Fuel Divestment Motion:

"THEREFORE BE IT RESOLVED THAT City Council direct staff to review and report back on the following items:

C. Bringing a motion to Council for the 2020 meetings of the Lower Mainland Local Government Association and the Union of B.C. Municipalities (UBCM) to re-examine the 2016 UBCM *Primer on Fossil Fuel Divestment and the Municipal Pension Plan* report, in light of globally changing investment and divestment strategies."

A point of order is raised when a Councillor questions whether proper procedure is being followed. It can include questioning whether a motion is out of order under section 8.7 of the Procedure By-law.

Section 8.7 [Motion out of order] states:

"8.7 The Chair may refuse to open a motion for debate if the Chair decides the motion is out of order because it:

(a) is not compatible with the purposes and objects of the Vancouver Charter including the good rule and government of the City, or the health, safety, and welfare of its inhabitants;

(b) conflicts with a law or by-law;”

Councillor De Genova’s questions would appear to be two-fold:

- (1) Is Part C out of order because it conflicts with Section 165.2 of the Vancouver Charter?
- (2) If so, should the speakers be limited in their comments to not speaking to or about Part C?

As Chair Kirby-Yung noted in the meeting, the motion was reviewed by Law and there were no concerns raised to her knowledge regarding this issue prior its inclusion on the Council agenda.

Councillor De Genova appears to have been concerned that Part C intruded sufficiently into the area of human resources and employee benefits that it might have been in conflict with Section 165.2 of the Vancouver Charter (presumably 165.2(1)(c)):

“Meetings that may or must be closed to the public

165.2 (1) A part of a Council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

(c) labour relations or other employee relations;”

In the context of the global nature of Climate Change and the Province-wide nature of the BC Municipal Pension Plan, Law does not interpret Resolution C to constitute a material intrusion into labour relations. Moreover, it would appear from the prior consideration of this issue at prior UBCM meetings (and the 2016 report issued by UBCM) that no other UBCM member (or their legal counsel) had any such concerns.

In any event, Section 165.2(1)(c) is a reason that a matter “may” be in camera. It is not a reason that a matter “must” be in camera, so there is no necessary conflict with Section 165.2.

Accordingly, we confirm that Law (and the City Clerk) had no concerns with Part C or any other aspect of the motion particularly since it is merely asking staff to review and report back with a possible recommendation (which only then, if a motion were approved by Council, would be formally before Council for consideration) for the 2020 LMLGA and UBCM meetings. We therefore confirm that Chair Kirby-Yung’s ruling on this point was in our view legally correct.

Given our view on Question (1) we are also of the view that Chair Kirby-Yung’s ruling (as to Question (2)), in terms of permitting speakers to continue to address Council on the Motion was also legally correct.

We hope that the above is of assistance to you and Council when this matter comes back for further discussion and debate.

Cheers,

Kelly

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Pronouns: he, him, his



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.