

Date: Tuesday, April 16, 2019
To: Nikki Gilmore, Chief Administrative Officer
From: Sheena Fraser, Manager of Corporate & Legislative Services
Subject: Council Procedure Bylaw – Reconsideration by a Council Member

PURPOSE

The purpose of this report is to bring forward a recommendation to provide clarification respecting section 31 of the Village of Pemberton Council Procedure Bylaw No. 788, 2015 for consideration by Council.

BACKGROUND

At the Regular Council Meeting No. 1487, held February 19, 2019, discussion took place regarding the interpretation of section 31 (*Reconsideration by Council Member*) of the Village of Pemberton Council Procedures Bylaw No. 788, 2015. This section states as follows:

31. Reconsideration by Council Member

- a) *Subject to section 31 (d), a Council member may, at the next Council meeting,
 - i) *move to reconsider a matter on which a vote, other than to postpone indefinitely, has been taken, and*
 - ii) *move to reconsider an adopted bylaw after an interval of at least twenty-four (24) hours following its adoption.**
- b) *A Council member who voted affirmatively for a resolution adopted by Council may at any time move to rescind that resolution.*
- c) *Council must not discuss the main matter referred to in section 31 (a) unless a motion to reconsider that matter is adopted in the affirmative.*
- d) *A vote to reconsider must not be reconsidered.*
- e) *Council may only reconsider a matter that has not:
 - i) *had the approval or assent of the electors and been adopted,*
 - ii) *been reconsidered under section 31 (a) or section 131 of the Community Charter;*
 - iii) *been acted on by an officer, employee, or agent of the Village.**

- f) *A bylaw or resolution that is rejected after reconsideration under section 30 (a) is deemed to be absolutely vetoed, rescinded and repealed, and is of no force or effect whatsoever, and shall not be reintroduced for a period of six (6) months except with the unanimous consent of Council.*
- g) *A bylaw, resolution, or proceeding that is reaffirmed under section 31 (a) is deemed as valid and has the same effect as it had before reconsideration.*

In particular, at issue was the interpretation of subsection 31 (a) as the intent of section 31 as a whole is to allow for a member who voted in favour to have a change of heart and bring back the matter for reconsideration. The question raised was whether or not section 31 applied only to a member who voted in favour as has been the historical interpretation or if a member who voted in opposition to the motion could also bring back the resolution for reconsideration.

As a result of this discussion, the following resolution was passed:

Moved/Seconded

THAT *Staff obtain a further legal opinion regarding the interpretation of Village of Pemberton Procedures Bylaw No. 788, 2015, Section 31 (a).*

CARRIED

OPPOSED: *Councillor Craddock
Councillor Zant*

DISCUSSION & COMMENTS

The intent of section 31 is to enable a Council member to bring back an item for reconsideration in the event that after some time a member might wish to have further discussion on a matter as a result of changing their mind with respect to their vote.

As noted above, the Village's interpretation has always been that a member who voted in opposition of an adopted resolution could not bring back the matter for reconsideration as if this were the case any member opposed could utilize this section to bring a matter back again and again despite the resolution being supported by a majority of Council members and ultimately adopted. This could result in delays in moving forward on an initiative as it would be continually debated with potentially the same results.

Further review of the Council Procedure Bylaw noted that in isolation section 31 (a) of the Council Procedure Bylaw would arguably allow for the right of any member to seek reconsideration. In this regard, the Village's approach has been to consider this section in its entirety along with the principles that govern council proceedings as set out in Roberts Rules of Order.

The basis of restricting the right of reconsideration to members who voted in favour is to allow for finality of council proceedings and to prevent items from being brought back to the table time and time again. It is also intended to allow for reconsideration where a member has a true change of view on the matter.

Staff has reviewed procedure bylaws from the Squamish-Lillooet Regional District (SLRD), District of Squamish (DoS) and the Resort Municipality of Whistler (RMOW). In this regard, both the RMOW and DoS Council Procedure Bylaws establish that only a Council Member who voted with the majority either for or against motion may make a motion to reconsider. The SLRD Board Procedure Bylaw establishes the same with slightly different wording.

Given the issue raised respecting clarity and taking into account the review of member municipality bylaws it is recommended that section 31 of the Council Procedure Bylaw be amended by deleting section 31 and replacing it with the wording as set out below (the new language is underlined):

Reconsideration by a Council Member

- a) *Subject to subsection d) a Council Member who voted with the majority either for or against a motion, may at the next Council Meeting introduce a motion;*
 - i. *to reconsider a matter on which a vote, other than to postpone indefinitely, has been taken, and*
 - ii. *to reconsider an adopted bylaw after an interval of at least twenty-four(24) hours following its adoption.*
- b) *Council must not discuss the main matter referred to in subsection a) unless a motion to reconsider that matter is adopted by an affirmative vote of Council.*
- c) *A vote to reconsider must not be reconsidered.*
- d) *Council may only reconsider a matter that has not:*
 - i. *had the approval or assent of the electors and been adopted;*
 - ii. *been reconsidered under subsection (1) of section 131 of the Community Charter [Mayor may require council reconsideration of a matter]; or*
 - iii. *been acted on by an officer, employee or agent of the Municipality.*
- e) *A motion under subsection a) must be introduced in compliance with section 19 (Late Business).*
- f) *If a motion to reconsider is defeated, the subject matter of the resolution or proceeding may not be open for consideration by the Council within six months except by way of a new and substantially different motion.*
- g) *A bylaw, resolution, or proceeding that is reaffirmed under section 31 (a) is deemed as valid and has the same effect as it had before reconsideration.*
- h) *Bylaws or resolutions that are rejected after reconsideration under section 30 (a) are deemed to be absolutely vetoed, rescinded and repealed, and are of no force or effect whatsoever, and shall not be reintroduced for a period of six (6) months except with the unanimous consent of Council.*

COMMUNICATIONS

If Council chooses to amend the *Council Procedure Bylaw No. 778, 2015*, notice must be given in accordance with section 124 (3) of the *Community Charter which states:*

A bylaw under this section must not be amended, or repealed and substituted, unless the council first gives notice in accordance with section 94 [public notice] describing the proposed changes in general terms.

Notice must be posted in public notice posting places and published for two (2) consecutive weeks in a newspaper that is distributed at least weekly. In this regard, should Council determine it is appropriate to bring forward this proposed amendment to the Council Procedure Bylaw notice will also be posted at the Village Notice Boards, on the Village website, via the eNews and Facebook Page.

LEGAL CONSIDERATIONS

Council is required by Section 124 of the *Community Charter* to establish a Procedure Bylaw. If Council wishes to make changes to the existing *Council Procedure Bylaw No. 778, 2015*, Council may pass a bylaw to amend the existing bylaw only after notice has first been given as noted above. The proposed amended clause has received legal review to confirm clarity of the wording.

IMPACT ON BUDGET & STAFFING

This review of the Council Procedure Bylaw has been incorporated into staff time of the Corporate & Legislative Services Department.

INTERDEPARTMENTAL IMPACT & APPROVAL

The review of the Council Procedure Bylaw has been incorporated into the daily routine of the Corporate & Legislative Services Department. Should Council elect to proceed with an amending bylaw this work can be accommodated.

IMPACT ON THE REGION OR NEIGHBOURING JURISDICTIONS

A review of the Council Procedure Bylaw has no impact on other jurisdictions.

ALTERNATIVE OPTIONS

The alternative option for consideration is to continue to operate Council meetings in accordance with the existing *Council Procedure Bylaw No. 778, 2015*. However, this is not recommended as a result of concerns raised respecting the interpretation of clause 31 as it is currently written.

POTENTIAL GOVERNANCE CONSIDERATIONS

This initiative supports the Village's Strategic Priorities 2019, particularly the Village's Strategic Priority of Good Governance.

The Village is committed to citizen engagement, being an open and accountable government, and fiscal responsibility.

RECOMMENDATIONS

THAT Council provide direction with respect to bringing forward a Council Procedure Amendment Bylaw to replace clause 31 (*Reconsideration by a Council Member*).

Prepared by:	Sheena Fraser, Manager of Corporate & Legislative Services
CAO Approval by:	Nikki Gilmore, Chief Administrative Officer