



PO Box 1749
Halifax, Nova Scotia
B3J 3A5, Canada

Item No. 2
Halifax Regional Council
January 19, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: M.E. Donovan
M.E. Donovan, Director, Legal Services

DATE: January 6, 2010

SUBJECT: Motions to Amend

INFORMATION REPORT

ORIGIN

Staff - this is in response to questions raised on the subject of "in what cases a motion to amend a main motion is out of order".

BACKGROUND

Some confusion has arisen as to whether a motion is in order in circumstances where a motion to amend the main motion purports to undermine or materially change in part or the whole the intention of the mover of the main motion.

DISCUSSION

A. Test of Germaneness (Relevance to the Question in the Main Motion)

S. 49 (1) of HRM Administrative Order #1 provides that any amendment to a motion shall:

- Be relevant to the question in the motion, and
- Not propose a direct negative to the motion.

One of the basic procedural rules is that only one question is to be taken up at a time. In conjunction with, and in support of, that basic procedural principle is that an amending motion has to be relevant to the main motion to be in order. Robert's Rules of Order (Robert's) refers to this test as the "germaneness" test. According to this test, whether an amending motion is in order depends on whether it is "germane" or, in other words, relevant to the main motion. According to Robert's, an amendment must always be germane – that is, closely related to or having bearing on the subject of the motion to be amended. And similarly to Administrative Order One, Robert's prohibits the usage of a direct negative in the amendment¹.

B. Determining the Germaneness/Relevance of an Amendment

To be germane/relevant to the main motion, an amendment must in some way involve the same question raised by the main motion; but not paraphrase the exact words of the main motion into the negative form of the sentence.

An amendment that is germane to the main motion can be either: a "friendly amendment" OR a "conflicting (hostile) amendment". Both kinds of amendments must involve the same question that is raised by the main motion. Generally the difference between the two kinds of amendments is that the friendly amendment suggests moderate adjustments to the main motion, while the conflicting amendment suggests a reasonable alternative to the main motion. More particularly:

1. **Friendly amendment:** the term "friendly amendment" is often used to describe an amendment offered by someone who is in sympathy with the purposes of the main motion; in the belief that the amendment, which involves the same question that the main motion deals with, will either improve the statement or effect of the main motion, presumably to the satisfaction of its maker, or will increase the chances of the main motion's adoption.

2. **Conflicting amendment:** the exact opposite meaning to the meaning in the main motion cannot be introduced if it uses the exact same words of the main motion while adding negative

¹ Robert's, p. 125

words such as “no” or “not” or exact opposite expressions. However, an amendment can be hostile to, or even defeat, the spirit of the original motion and still be germane (not out of order) if it amends the spirit of the main motion² by suggesting something else – a new alternative. Meaning, simply objecting to the main motion “*to build a new building on the parcel*” by the amendment “*not to build a new building on the parcel*” would be considered out of order. However, it is legitimate to object to the main motion “*to build a new building on the parcel*” by suggesting a positive alternative amendment “*to plant a new corn field on the parcel*”. The amendment is germane to the main motion, since it involves the question that maybe wasn’t asked aloud but, in fact, is answered by the main motion: “what to do with the parcel?” Such amendment is legitimate and not out of order as it provides:

- A different answer;
- To the same question that is raised by the main motion;
- While avoiding any negative terminology.

A good example of a conflicting (hostile) amendment that challenges a main motion without using any negative terminology would be when a main motion is: “*the City Council will commend Officer George for his action in...*” and an amendment suggests “*that the City Council will censure Officer George for his action in...*”. Although in conflict with the original intent, the amendment is germane and would be in order because both suggestions deal with council’s opinion of the officer’s action. Also, since a motion to censure the officer for the same act could not be introduced independently in the same session after the adoption of a motion to commend him, the amendment to change “*commend*” to “*censure*” is germane. It should be noted that the particular word “*censure*” is different from the negative phrase “*not commend*”, since “*censure*” actually suggests to the council to actively express a negative opinion of the officer’s action rather than simply apply direct negative to the question in the main motion and merely offer not to express a positive opinion of the officer’s action³.

Aside from these principles, there is no single, all-inclusive test for determining when a proposed amendment is germane and when it is not. A method by which the germaneness of an amendment can often be verified, is if a proposed amendment is related to the main motion in such a way that, after the adoption, rejection, or temporary disposal of the present main motion, the essential idea of the amendment could not be introduced as an independent resolution at least during the same meeting, the amendment is germane and should be admitted, since there will not, or may not, be any opportunity to present it later. However, this test cannot be reliably used to determine that an amendment is out of order, since it is sometimes possible for an amendment to be germane even if, regardless of action on the main motion, the idea embodied in the amendment could be introduced independently later in the same session⁴.

² Robert’s, p. 130.

³ Robert’s, p. 131.

⁴ Robert’s, p. 130-131.

There are borderline cases where it is difficult to judge the germaneness of an amendment. Whenever there is doubt, the amendment should be admitted or, in important cases, the decision can be referred to council by the chair for their view on the motion.

BUDGET IMPLICATIONS

There are no budget implications.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

None.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Janet Kravetz, Legal Researcher, 490-7311