

January 5, 2026

Our File No. 150863

Karen Redman
Regional Chair
The Corporation of the Regional Municipality of Waterloo
150 Frederick Street
Kitchener, ON
N2G 4J3

Dear Chair Redman and Members of Regional Council:

Re: Procedural Validity of Regional Council's Vote on the Waterloo Region Police Service 2026 Capital Budget Approval – December 16, 2025

We have been asked to provide a legal opinion on the procedural issues pertaining to a vote related to the Waterloo Regional Police Service 2026 Capital Budget ("**Police Budget**") at the meeting Council held on December 16, 2025. We have been requested to review the procedure that was followed and provide an opinion on the validity of the vote and the effect of the confirmatory by-law that was subsequently passed at that meeting.

Issues

We have considered the following issues in our review of this matter.

1. Did Council properly exercise its authority under the Procedural By-law to permit a post-vote change after the result was announced?
2. Can the confirmatory by law passed at the meeting cure any procedural defect arising from the post-vote change?
3. What is the correct procedure available to Council to address or rectify these issues going forward?

Background

At the Special Council Meeting on December 16, 2025, Council considered a motion to approve the Police Capital (the "**Motion**"). The Motion was defeated on a recorded vote of 7 to 8, with Councillor Foxton voting against the Motion. Chair Redman announced the result, and Council recessed for approximately eleven minutes.

When Council reconvened, Chair Redman recognized Councillor Foxtton, who stated that she wished to reconsider her vote and change it to a positive one. She referenced her vote in support of the Police Budget before the Strategic Planning and Budget Committee (the “**Committee**”) earlier that same day. She expressly stated, “I am asking for reconsideration.”¹

In seeking to respond to Council, the Regional Clerk stated as follows:

So Chair, it is my understanding that Councillor Foxtton didn’t...would like to change her vote, having voted in error. We’ve already done that today for Councillor Craig. In this situation we would correct her vote.²

Chair Redman asked the Clerk whether the change would affect the outcome and was advised that it would, resulting in an 8 to 7 approval of the Motion.³

Several members of Council raised concerns about whether Councillor Foxtton had voted in error or was simply attempting to change her vote after the fact.

Councillor Foxtton sought to clarify her request by noting that her original vote at Committee had supported the Police Budget and that she wished to remain consistent with that position.

A number of other members commented on the implications of the vote change for the integrity of the decision-making process but no member formally challenged the process or any ruling of the Chair to proceed on the basis that the Motion had carried as a result of the corrected vote.

The next item related to the enactment of the Confirmatory By-law and a question was raised about the implications of the passing of the Confirmatory By-law to the vote on the Police Budget.

Further discussion ensued with members of Council continuing to question whether proper procedure had been followed.

This led to the Clerk noting that the Region’s Procedural By-law 22-051 (the “**Procedural By-law**”) did not expressly address vote changes, that Council had previously allowed vote corrections, that he was alerted by Councillor Foxtton that she had voted “in error” and that the change was being treated as a correction.

Councillor Foxtton reiterated that her vote at the earlier meeting of the Committee was positive (i.e. in favour of approving the Police Budget) and that she erred in voting against the Motion at Council.

Following some discussion regarding a possible notice to reconsider and a waiving of the rules, Council passed the Confirmatory By-law by a vote of 9 to 7 to affirm the proceedings of the meeting, notwithstanding continued concerns from some members regarding the procedural validity of the vote change on the Police Budget. The meeting was then adjourned.

¹ [Special Council - December 16, 2025](#) at timestamp 20:05.

² [Special Council - December 16, 2025](#) at timestamp 20:12.

³ [Special Council - December 16, 2025](#) at timestamp 20:28.

Analysis

(a) Council's Authority to Alter Vote Not Exercised in a Procedurally Valid Manner

The proceedings of Council and its committees are governed by the Procedural By-law. The Clerk correctly advised Chair Redman that the Procedural By-law does not contain any provision expressly authorizing a member of Council to change their vote after a vote has been taken and the result announced. However, section 2.1.2 of the Procedural By-law provides as follows:

2. Purpose and Principles

- 2.1.2 Those proceedings of the Council and the standing committees thereof not specifically governed by the provisions of this by-law shall be regulated in accordance with generally accepted parliamentary procedure contained in Robert's Rules of Order.

The effect of section 2.1.2 is that, where the Procedural By-law is silent on a particular point of procedure, Council is required to apply *Robert's Rules of Order*⁴ as the governing parliamentary authority.

Robert's Rules contain specific provisions respecting post-vote changes. These are reproduced below:

Changing One's Vote

Except when the vote has been taken by ballot (or some other method that provides secrecy), a member has a right to change his vote up to the time the result is announced but afterward can make the change only by the unanimous consent of the assembly requested and granted, without debate, immediately following the chair's announcement of the result.

Time Limits on Efforts to Challenge, Retake, or Change a Vote

After the result of a vote has been announced, members can still propose or demand certain actions that may change the result. A member may raise a point of order regarding the conduct of the vote, demand a division of the assembly, move to retake the vote under another method, move for a recapitulation of a roll-call vote, or request unanimous consent to change his vote.

With the exception of a point of order raised against a breach of a continuing nature, if any of these actions is to apply to a vote after the result has been announced, it must be taken immediately after the chair's announcement, before any debate or business has intervened. For example, it is too late to take these actions after any member has been recognized and begin to speak in debate or to give a report or presentation, or after the chair has stated the question on a substantially made motion, or after the chair has begin to take the vote and any member has voted on another motion that was pending.

⁴ Henry M Robert III, *Robert's Rules of Order, Newly Revised*, 12th ed (New York: PublicAffairs, 2020); [*Robert's Rules*].

Assembly's Prerogative in Judging Voting Procedures

The assembly itself is the judge of all questions arising that are incidental to the voting or the counting of the votes. In an election ballot, for example, the tellers should refer to the assembly for decision all questions on which there is any uncertainty.⁵

The Clerk correctly advised Council that the Procedural By-law addresses motions to reconsider at section 54.

Although the Procedural By-law does not expressly link reconsideration to changes in individual votes, the reconsideration provisions address the same procedural circumstance contemplated by *Robert's Rules* once the result of a vote has been announced, namely, the reopening of a decision that has already been made by Council.

The Procedural By-law gives effect to this principle through a formal and structured reconsideration regime. Rather than permitting informal or *ad hoc* permission to alter the outcome of a vote, section 54 establishes a mandatory process by which Council may collectively revisit a prior decision. That process displaces any unilateral or administrative mechanism for altering a vote after the result has been announced.

Read together, *Robert's Rules* and the Procedural By-law reflect the same underlying principle: once a vote has been taken and the result has been announced, the outcome belongs to Council as an assembly, not to individual members.

Any change to that outcome requires an express and collective act of Council exercised in accordance with the Procedural By-law.

We also note that the Procedural By-law provides Council with an express mechanism to depart from its procedural requirements where it considers it appropriate to do so. Section 2.3 permits the suspension of the rules by an affirmative vote of at least two-thirds of the members present, provided the specific procedure or rule to be suspended is clearly identified:

2.3 Suspension of Rules

- 2.3.1 No provision of this by-law shall be suspended except by an affirmative vote of at least two-third of the members present for each incidence of suspension of the rules.
- 2.3.2 The suspension shall only apply to the procedure(s) or rule(s) which are stated within the motion to suspend and only during the meeting in which such motion was introduced.
- 2.3.3 The following procedure(s) or rule(s) cannot be suspended:
 - 2.3.3.1 Majority of members for quorum.

⁵ *Robert's Rules*, §45, Voting Procedure.

In this case, however, Council did not suspend the rules. While Council did have the authority, in principle, to alter the outcome of the vote after the result had been announced, that authority could only be exercised through the mechanisms set out in the Procedural By-law. Specifically, Council could have proceeded by way of reconsideration under section 54 or via a properly authorized suspension of the applicable procedural requirements under section 2.3. Because neither mechanism was invoked, the post-vote change did not occur through a procedurally valid exercise of Council's authority.

Finally, the Clerk stated at the meeting that the correction of votes had been permitted on other occasions and he pointed to Councillor Craig's earlier correction of his vote that day (which also followed a recess).⁶

This raises the question of the nature of a convention, custom or historical practice and its application. Such unwritten rules typically supplement formal rules but they generally do not supersede or have primacy over them.

In this case, while the Procedural By-law did not expressly apply to a change of a member's vote and *Robert's Rules* does address the opening of an announced vote requires that it be brought back before the assembly. Accordingly, while Council may have accommodated in the past and have permitted members to change their votes if they claimed they had cast them incorrectly, such practice does not accord with proper parliamentary procedure in accordance with *Robert's Rules* and, in our view, cannot be relied upon in the future.

(b) Confirmatory By-law Does Not Cure Procedural Defect

A confirmatory by-law is procedural and ancillary in nature. Its function is to confirm and ratify actions lawfully taken by Council during a meeting.⁷ It presupposes that those actions were within Council's jurisdiction and were carried out in accordance with the governing procedural framework. It does not operate as an independent source of authority, nor does it retroactively validate actions that were procedurally unauthorized at the time they were taken.

In this case, the defect does not lie in the form of the confirmatory by-law itself, but in the process by which Council treated the motion as having carried. As set out above, the outcome of the vote was altered without regard to any mechanism authorized by the Procedural By-law.

At the moment Council proceeded on the basis that the motion had passed, it had not lawfully exercised its authority to change the outcome of the vote. A confirmatory by-law cannot supply that missing authority after the fact. The Confirmatory By-law also cannot be treated as an implicit reconsideration or suspension of the rules. Accordingly, the Confirmatory By-law does not cure the procedural defect arising from the post-vote change.

⁶ [Special Council - December 16, 2025](#) [at timestamp 29:25] Regional Clerk: "Councillor Foxton told me she wanted to correct her vote. That's the process that we have done whenever a councillor has asked us to say 'I voted incorrectly, I'd like to correct it.' In this case, yes, it changed the vote, but that's the process from my perspective. We're following our past precedent." This was also recognized by Councillor Salonen [at timestamp 21:36]. As noted, no member formally challenged the procedure under the s. 31.2 of the Procedure By-law.

⁷ John Mascarin, Stephen Auerback, *Annotated Municipal Act*, 2nd ed (Toronto: Thomson Reuters), at § 249:1.

(c) Procedural Mechanisms for Post-Vote Changes

Where a member seeks to change their vote after the fact, the applicable procedural framework is defined by the interaction between the Procedural By-law and *Robert's Rules*. As noted above, the Procedural By-law does not expressly address post-announcement vote changes. As a result, section 2.1.2 applies and requires Council to apply *Robert's Rules*.

Robert's Rules do not permit a member to unilaterally change their vote once the result has been announced. *Roberts Rules* allow a post-announcement vote to change only in narrowly prescribed circumstances requiring immediate and unanimous consent of the assembly. Where those conditions are not met, there is no mechanism for changing a vote set out in *Robert's Rules*.

In those circumstances, the Procedural By-law supplies the only lawful avenues available to Council. Because the outcome of a vote, once announced, belongs to Council as a body, any alteration to that outcome must occur through an express exercise of Council's collective authority under the By-law.

The Procedural By-law provides two such mechanisms. The first is reconsideration under section 54, which permits Council to re-open a prior decision and vote again in accordance with the prescribed procedural requirements. The second is suspension of the rules under section 2.3, which allows Council, by the required two-thirds vote and with specificity, to depart from its procedural requirements.

Absent an amendment to the Procedural By-law, these are the only procedures available to Council to address a request to change a vote after the result has been announced. Any approach that treats a post-announcement vote change as an administrative correction, rather than as a matter requiring collective authorization under the Procedural By-law, is procedurally improper.

The Region's convention, custom or historical practice to accommodate individual vote changes or corrections after formal announcement, while it may be convenient and expeditious, should not be continued without an express provision to allow such action being set out in the Procedural By-law.

Conclusions

The change to Councillor Foxton's vote after the result was announced did not proceed by an authorized manner under the Procedural By-law. While Council had the power in principle to alter the outcome, that authority could only be exercised collectively through reconsideration under section 54 or a suspension of the rules under section 2.3 of the Procedural By-law. Neither process was invoked.

The subsequently-enacted Confirmatory By-law does not have a curative effect. The Confirmatory By-law does not operate as an independent source of authority to, in essence, remediate any procedural defects that may have occurred at the meeting.

Although we have determined that the approval of the Motion was procedurally irregular, it is our opinion that the defect relates only to Council's own internal or domestic rules - it does not pertain to any statutory or external requirement. As a result, the procedural irregularity does not invalidate the vote on the Motion.

January 5, 2026

Page 7

We caution members of Council to not rely on past precedent allowing post-announcement individual vote corrections. We urge Councillors to be vigilant to ensure they vote as they intend given that the Procedural By-law does not authorize self-correction of voting errors.

Yours truly,

AIRD & BERLIS LLP



John Mascarin
Partner

JM/JMB

67262328.1