

To: Council in Committee of the Whole

From: Tracy Adams, Commissioner,
Corporate Services Department

Report Number: CNCL-20-14

Date of Report: April 8, 2020

Date of Meeting: April 15, 2020

Subject: Electronic Participation for Council Meetings During a Declared
Emergency

File: A-2120

1.0 Purpose

The purpose of this report is to provide information and to obtain Council direction regarding electronic participation by Members of Council, City staff and the public during a declared emergency in response to Bill 187 that amended the *Municipal Act, 2001*.

Attachment 1 is the proposed by-law to amend Council Procedure By-law 111-2017.

Attachment 2 is input received from Durham Region area municipalities and other municipalities.

2.0 Recommendation

It is recommended to City Council:

1. That in accordance with Report CNCL-20-14 dated April 8, 2020, Council's Procedure By-law 111-2017, as amended, be further amended in the form of the by-law set out in Attachment 1 to permit electronic participation in open and closed meetings in cases where an emergency has been declared to exist in all or part of the City of Oshawa and that such participation by a Member of Council count towards quorum; and,
2. That during the declared Emergency related to the COVID-19 Pandemic, all Standing Committee meetings be suspended and all matters be dealt by Council; and,
3. That the requirements of Notice By-law 97-2000 regarding notice to the public for amendments to Council's Procedure By-law be waived given the emergent situation related to COVID-19.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

- Information Technology Services
- Legal Services
- Region of Durham, Durham and other Ontario municipalities (Attachment 2)
- Association of Municipalities of Ontario (A.M.O.)
- Ministry of Municipal Affairs and Housing

5.0 Analysis

5.1 Bill 187

On March 19, 2020, the Government of Ontario passed Bill 187, the *Municipal Emergency Act, 2020*, which further amends Section 238 of the *Municipal Act, 2001* to permit Members of Council, local boards or Committees of either of them to participate electronically, should they choose to, in a meeting during a local or province-wide emergency in both open and closed meetings and be counted for the purposes of quorum.

Bill 187 states:

“(3.3) The applicable procedure by-law may provide that, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the Emergency Management and Civil Protection Act,

(a) despite subsection (3.1), a member of a council, of a local board or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and

(b) despite subsection (3.2), a member of a council, of a local board or of a committee of either of them can participate electronically in a meeting that is closed to the public.

Same, procedure by-law

(3.4) A municipality or local board may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (3.3) during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the Emergency Management and Civil Protection Act and despite subsection (3.1), a member participating electronically in such a special meeting may be counted in determining whether or not a quorum of members is present at any time during the meeting.”

These provisions are optional and only in effect during a declared emergency and only apply in the event of an emergency has been declared by the Premier, Cabinet or the Municipal Head of Council under Section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*. Once the emergency has ended, regular meeting rules will apply.

On March 17, 2020 Premier Ford declared a state of Emergency in the Province of Ontario and on April 6, 2020, Mayor Carter declared a state of Emergency in the City of Oshawa related to the COVID-19 Pandemic. Based on the declarations and the provisions of Bill 187, should Council wish to permit electronic participation for Members of Council, Council's Procedure By-law would need to be amended to permit electronic participation during a declared emergency.

5.2 Procedure By-law Amendments

Attachment 1 to this report provides proposed amendments which are intended to maintain the spirit of the existing meeting rules while providing additional flexibility to accommodate issues that may arise when using technology for meeting participation. During a declared emergency, a number of procedural concerns must be considered and addressed as noted below.

1. Members must advise the City Clerk by noon of the business day prior to the meeting commencement of their intent to participate electronically in order to ensure appropriate technology is in place and functioning appropriately. The form of the tools used to participate remotely may be dependent on the nature of the emergency and the available systems or networks.
2. In order to ensure all members are able to participate fairly and equally regardless of their method of participation, all votes will be recorded votes, commencing alphabetically by the Members' surnames with the Chair voting last.
3. The Chair will be given some latitude to amend meeting rules in order to accommodate technology issues or to ensure the meeting is run effectively, efficiently, and with opportunity for participation by all Members, regardless if their attendance is in person or electronic. However, additional formalities may be required such as waiting for the Chair to state the name of the Member who has the floor, in order to balance participation fairly. In addition, it is important to note that the provisions only affect the manner in which members participate and if they are counted towards quorum. All other meeting rules must still apply, including those with respect to meeting notice, minutes, speaking only to motions, time limits and number of opportunities to speak and the presence of the Mayor and City Clerk.
4. During the COVID-19 Pandemic and in order to maintain the Provincial guidelines regarding limiting public gatherings to 5 persons or less, the Mayor or Deputy Mayor (or designate), the City Clerk, the Deputy City Clerk (or designate), City Clerk Services support staff and Information Technology Services staff will be permitted in the Council Chamber. All other Members of Council and City staff will participate electronically from their offices or an alternate private location to maintain required physical distance in accordance with Provincial orders. Notwithstanding this, should the emergency evolve such that that the Mayor or Deputy Mayor (or designate) and the City Clerk or Deputy City Clerk (or designate) are unable to attend in person, the location of the meeting will be listed as Electronic and Remote Meeting and all participants will join the meeting remotely.

5. In the event of a closed session, Member(s) of Council participating electronically must ensure that the meeting discussion and materials are not accessible by individuals that are not subject to be part of the closed portion of the meeting. Members of Council must still respect Council's Code of Conduct regarding the protection of confidential information from unauthorized disclosure, release, publication or use. The Chair may ask each Member participating remotely to confirm they are the only one present in the room or within hearing distance from the Member.
6. Public participation in meetings will be dependent on the nature of the emergency. For example given the current COVID-19 situation and in order to comply with the direction of the Prime Minister of Canada, the Premier, the World Health Organization and the Medical Officers of Health at the Federal, Provincial and Regional level concerning the restriction on public gatherings to less than five (5) persons, in-person attendance by the public will not be permitted. The *Municipal Act, 2001* requires that, subject to the provisions in Section 239, all meetings be open in order for members of the public to observe the meetings. In order to comply with these provisions, members of the public may still view open meeting web streams online live and following the meeting as archived on the City's website. In addition, members of the public may submit written correspondence regarding an item on the agenda to the City Clerk up to 2 hours prior to the meeting for Council's consideration. The Clerk will e-mail the correspondence to all members of Council.
7. The Association of Municipalities of Ontario (A.M.O.) has expressed that Municipal Councils should consider the nature of business being conducting during an emergency, and urges Municipal Councils to act on critical business related to emergency response, and consider deferring other matters until regular meetings can resume. In addition, A.M.O. recommends municipalities look closely at the processes around committees, suggesting that Councils should consider if the committee process is absolutely necessary during an emergency, particularly given the more informal meeting rules, and discourages non-essential meetings. However, staff are recommending business be conducted as usual during the Covid-19 Pandemic but no standing committees and the Committee of the Whole procedure be used as part of the meeting to provide opportunity for greater discussion of those items.

5.3 Technology Requirements

Bill 187 does not prescribe specific technology requirements, permitting flexibility by municipalities based on their individual needs. Electronic participation may take place via teleconference, video conference, or other conferencing software. Staff have established a temporary solution using Cisco Webex Meetings, although continued investigation may determine a better or more cost-effective option, depending on the length of the emergency and/or future needs or improvements to technology. The proposed amendments to Council's Procedure By-law provide authority to the City Clerk in consultation with C.A.O. and I.T.S. to determine the most suitable option for electronic participation depending on the state of the emergency during which the provisions are used and available technology in the Council Chamber.

6.0 Financial Implications

It is anticipated that the temporary solution currently selected for electronic participation will cost \$200 per month plus \$700 for headsets which can be funded from the 2020 IT Operating Budget. This cost is based on the assumption that each Member of Council and/or City staff will use the City-issued device provided (e.g. Surfaces) to them for access and no further equipment is required in the Council Chamber.

Should other alternatives be considered in future, financial implications may change based on additional required equipment or software licensing.

7.0 Relationship to the Oshawa Strategic Plan

This report supports Strategic Goal 4.2 – Accountable Leadership by ensuring responsiveness, transparency and accountability.



Mary Medeiros, City Clerk,



Tracy Adams, Commissioner,
Corporate Services Department



**By-law -2020
of The Corporation of the City of Oshawa**

being a by-law to further amend Council Procedure By-law 111-2017, as amended to permit electronic participation in open and closed meetings in cases where an emergency has been declared to exist in all or part of the City of Oshawa and that such participation by a Member of Council count towards quorum.

Whereas the *Municipal Emergency Act, 2020* provides for municipal Councils to participate electronically during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*; and,

Whereas in order to implement these provisions, the Council must amend the applicable procedure by-law;

Now therefore the Council of the Corporation of the City of Oshawa hereby enacts as follows:

1. That the following section be added as Section 31 and the subsequent sections be renumbered accordingly:

“31. Electronic Participation during a Declared Emergency

- a) Notwithstanding the provisions of this By-law and Section 238 of the *Municipal Act, 2001*, S.O. 2001, c. 25, during any period where an emergency has been declared to exist in all or part of the Municipality under Section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, a Member of Council may participate electronically in a Meeting that is either Open or Closed to the public and in doing so may be counted in determining whether or not a quorum of members is present.
- b) The City Clerk, in consultation with the Chief Administrative Officer and Information Technology Services will determine the most suitable option for electronic participation depending on the state of the emergency during which the provisions are used and available technology in the Council Chamber.
- c) Electronic participation will include but is not limited to: telephones, video conferencing and computers with internet access and conferencing software or programming.
- d) The City Clerk will provide the procedure which is to be followed in advance of the Meeting.

- e) The City Clerk in consultation with the Mayor and the Chief Administrative Officer will determine the format which is to be followed for Meeting Agendas.
- f) Members will advise the City Clerk no later than noon the day before the Council Meeting of their intent to participate electronically to ensure proper technology is enabled to make such participation possible.
- g) All votes during a Meeting where some or all Members are participating electronically will be recorded votes, commencing alphabetically by surname with the Chair voting last.
- h) In the event of a closed Meeting, Member(s) of Council participating electronically must ensure that the meeting discussion and materials are not accessible by individuals that are not subject to be part of the closed portion of the meeting. Members of Council must still respect Council's Code of Conduct regarding the protection of confidential information from unauthorized disclosure, release, publication or use. The Chair may ask each Member participating remotely to confirm they are the only one present in the room or within hearing distance from the Member.
- i) In the event that due to the nature of the emergency members of the public are not permitted to attend in-person, the City Clerk may establish alternative processes for the public where possible and appropriate, and in keeping with Section 6 – Public Participation.
- j) Subject to this Section, all other provisions of this By-law will continue to apply, however the Chair may modify the rules of procedure as necessary in order to ensure all members present, whether in-person or electronically, are able to fully participate fairly and effectively.
- k) The City Clerk may provide for the electronic participation of staff including the City Clerk, depending on the nature of the emergency situation.”

By-law passed this day of , 2020.

Mayor

City Clerk

Municipality	Procedure by-law Amended to Permit Electronic Participation	Regular Business or Critical Time-Sensitive Business
Region of Durham	Yes	Based on agendas, dealing with regular business. Standing Committees have been cancelled.
Ajax	Yes	<p>First meeting on April 20. Only critical or time sensitive items will be on the agenda but not necessarily related to the emergency. No delegations, presentations, correspondence or announcements. In May and beyond, more routine elements will be added and hopefully improved measures for public access and participation digitally.</p> <p>Ajax has also cancelled the April meetings of its Standing, Advisory and quasi-judicial committees.</p>
Brock	Yes	Dealing with time-sensitive day-to-day issues including staff reports and correspondence, no delegations, presentations or announcements. Adding more routine correspondence into agenda for meeting on April 6. Cancelled March meetings, so there is a backlog.
Clarington	Yes	Regular business with the exception of those matters that are controversial and would have significant public participation.
Guelph	Yes	Normally, Guelph uses Committee of the Whole, however are only holding Council meetings right now with critical and time sensitive business only.

Municipality	Procedure by-law Amended to Permit Electronic Participation	Regular Business or Critical Time-Sensitive Business
Hamilton	Yes	Only urgent matters at this time. Suspended all planning meetings and Committee of Adjustment for now.
Kingston	Yes	No response
Markham	Yes	Based on agendas, dealing with regular business.
Mississauga	Yes	No response
Newmarket	No	They have suspended all regular meetings until August, special meetings may be held electronically to deal with critical business.
Pickering	Yes	Only urgent and critical business for now. Cancelled regular Standing Committee and Council for April and have placeholders for special meetings for critical business. The longer the emergency continues however, the agendas will likely take on a more regular approach in future.
Scugog	Yes	Based on agendas, dealing with regular business.
Uxbridge	Yes	Have held two meetings as of March 31. Both Special Council Meetings so business was specific and limited. April 6 is the first Committee Meeting, but given the limited activity taking place right now, not a lot is anticipated for the agenda.

Municipality	Procedure by-law Amended to Permit Electronic Participation	Regular Business or Critical Time-Sensitive Business
Vaughan	Yes	No response
Whitby	Yes	They have collapsed their two Committee of the Whole meetings into one meeting, followed by a Council meeting the following week. The Mayor has asked that matters that advance economic development and business in the municipality be considered.