



Report to Council

Department: Office of the CAO
Division: Legal and Legislative Services
Date: May 2, 2022
Prepared by: Robert W Auger, Town Solicitor /Clerk
Report Number: Legal and Legislative Services-2022-16
Subject: Procedural By-Law and Electronic Participation in Meetings
Number of Pages: 7

Recommendation(s)

That Legal and Legislative Services-2022-16 entitled Procedural By-Law and Electronic Participation in Meetings prepared by Robert W Auger, Town Solicitor /Clerk dated May 2, 2022, be received; and

That Council endorses the status quo provisions of the procedural by-law relating to electronic participation in meetings:

-OR-

That Council provides the following additional direction(s) relating to proposed amendments to the procedural by-law in reference to electronic participation in meetings:_____;

That Council direct administration to provide that delegations for the regular and special council meetings be allowed to continue to have the option of attending electronically;

That Council endorses and supports the live streaming of Regular and Special Council meetings on a permanent going forward basis; and

That Council give direction to Administration to review and bring forward recommendations relating to the live streaming of Committees for the next term of Council.

Purpose

Council approval via by law is required in order to make any amendments to its procedural by-law pertaining to the meetings of Council and its committees

Background and Discussion

In 2017, the Municipal Act, 2001, S.O. 2001, c. 25 (the "Act") was amended to allow Council members to participate electronically but only during the open session portion of the meetings and only if Council adopted a procedural by-law allowing electronic participation. Even if permitted to participate, the Act at that time did not allow for that member's electronic participation to be counted towards quorum.

In response to the COVID-19 pandemic the Act was then amended in early 2020 to permit electronic meetings of Council (and its Committees) during declared emergencies only, if Council allowed electronic meetings in its Procedural By-Law. Council accordingly amended its Procedural By-Law (Amending By-law 1902) at its March 23, 2020 meeting to allow for such meetings such that during a time of Declared Emergency (pursuant to the Emergency Management and Civil Protection Act, R.S.O. 1990, C. E.9 as am. "EMCPA") Council and its Committees could meet electronically both in open and closed session and all such members electronic participation would count towards establishing quorum for such meetings.

The Act was then further amended on July 8, 2020, through Bill 197, to allow for electronic meetings at any time (both open and closed and to count as quorum) and therefore not

only during declared emergencies but only if and subject to Council adopting a procedural by-law that provides for the same and its terms and conditions.

The current Town of Essex Procedural by-law (By-law 1926) currently provides for the following with respect to electronic participation in meetings that take place outside of a Declared Emergency situation:

3.11 Electronic Participation during a Personal Emergency

- 3.11.1 A Council Member may participate in Meeting(s) electronically during such time that there is a Personal Emergency (an extraordinary or emergency situation preventing a Council Member (s) from participating in the Meeting in person), subject to the following:
- 1) For the purposes of this Section the Mayor or Deputy Mayor, in consultation with the Chief Administrative Officer or Deputy Chief Administrator Officer, shall have the final and binding discretion to make a personal emergency determination and the duration thereof;
 - 2) The form and manner of such electronic participation shall be determined at the discretion of the Clerk acting reasonably and in consultation with the Chief Administrative Officer or Deputy Chief Administrative Officer.
 - 3) Requests for Electronic Participation by a Council Member shall be made to the Clerk in writing or by email transmission at least one (1) business day prior to the Meeting.
 - 4) No more than three (3) Council Members may participate in the same Meeting electronically.
 - 5) Council Members may not participate electronically in any Meeting or in any portion of a Meeting that is closed to the public.
 - 6) A Council Member participating in a Meeting electronically shall be considered to be present at such meeting but shall not count towards the determination of Quorum.
 - 7) The Chair must be present in person at a Meeting.

What this current provision in the Procedural by-law means is the following:

- outside of a Declared Emergency Council meetings must have a quorum of its members meeting in person for all open meetings inclusive of the Mayor (Chair).

- Outside of a Declared Emergency up to 3 Council members could still participate electronically in a meeting but such electronic participation is only intended to facilitate a temporary extraordinary situation that is preventing the Council member from attending in person.
- outside of a Declared Emergency, closed or *in camera* Council Meetings must only be attended 100% in-person by the Council members.
- outside of a Declared Emergency all Committee meetings are to be attended by its members in-person only.

Administration feels that the current provisions of the procedural bylaw strike a fair balance between:

- those who believe in-person meetings remain the best and most reliable way to conduct a public meeting in an orderly and expeditious manner while maintaining discourse and deliberation in a civil, respectful, and cordial manner; and
- those who want the extra flexibility and accessibility that electronic participation can offer or add to such meetings.

On May 2, 2022 The Town of Essex is expected to terminate the Declaration of Emergency made in March 2020 in response to the COVID-19 pandemic. Upon the termination of such emergency declaration these current provisions of the procedural by-law shall apply unless the Procedural by-law is further amended upon Council direction.

Again the Municipal Act now permits or allows for Council and its Committees to participate in meetings electronically (and count as quorum), if Council allows it in its Procedural By-Law.

To this end, the Act now says the following:

238. (3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law.

(3.3) The applicable procedure by-law may provide that,

(a) 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) 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 open or closed to the public.

As a result some items for Council to consider in providing direction moving forward post emergency declaration include the following:

- For its regular and special council meetings does Council wish to continue to have the ability to participate electronically (in whole or in part) in such meetings without the need to have a Quorum attend in person?
- For its regular and special council meetings does Council wish to:
 - Require its delegates to only attend the meetings in person
 - continue to require delegations to only participate in such meetings electronically;
 - offer it's delegations the flexibility to attend either in person or electronically?
- For it's in camera or closed meetings does council wish to continue to have the ability to participate electronically (in whole or in part) in such meetings?
- For its Committee meetings does council wish to:
 - require the Committees to only attend the meetings in person or allow some or all of these committees and their members to participate in electronic meetings (in whole or in part)?

- offer committee delegations the flexibility to attend either in person or electronically?

It is recommended that Council provide direction on whether it endorses the post-emergency status quo of the procedural by-law or if it wishes to provide new/further direction on any or all of these matters.

If Council wishes to provide new/further direction on these matters then the appropriate amendments to the procedural bylaw would need to be made together with advice on what if any the budgetary impact of such changes might be. If Council were to provide such further direction such amending by-law could be brought as soon as the May 16th council meeting. Until such time:

- regular and special council meetings must meet with a quorum of the members attending in person with electronic participation permitted for up to three members;
- In camera or closed council meetings must be 100% in person; and
- committee meetings must be 100% in person

With respect to delegations the current procedural by-law is technically silent on whether such delegations must be in person or can facilitate electronic attendance. The current procedural bylaw simply provides that the form and manner of any such electronic meeting participation shall be at the discretion of the Municipal Clerk. During the pandemic this provision was interpreted and applied liberally by the Municipal Clerk to allow for as much flexibility as possible in order to facilitate transparency and ensure public access but while having to balance same with resource availability and the limitations imposed by the pandemic. This meant facilitating electronic participation by public delegations and members of the public who wished to “electronically attend” at Council and Committee meetings during the declared emergency. It is recommended that even if Council, post emergency, wishes to support the status quo provisions of the procedural bylaw, that the

delegations for regular and special council meetings be allowed to continue to have the option of attending electronically.

As a final note, during the pandemic the Council meetings themselves (both regular and special meetings) transitioned to a live stream format whereas prior to the pandemic only the regular council meetings had been video recorded and posted post-meeting to the Town website. This almost immediate transition to live streaming of the Council meetings in March 2020 has greatly enhanced public access to the meetings and it is recommended that the live streaming of Council Meetings be a permanent element of open Council meetings going forward. While some very limited preliminary testing of Committee live streaming took place during the pandemic there are several other and different considerations (including issues relating to budget, logistics, IT and Staff resources, legal and training) that would still need to be examined or reviewed thoroughly before consideration should be given, if at all, to the possibility of live streaming some or all of the Committee meetings going forward. It is recommended that Council give direction to administration to review and bring forward recommendations relating to the live streaming of Committees for the next term of Council.

Regardless of the additional Council direction that may be provided by way of this Report it would appear that post emergency declaration the Town will again need an appropriate forum for the holding of its regular council meetings. The Town used its historic council chambers (at the Town Municipal building located at 33 Talbot Street South, Essex Centre) as a base for hosting virtual meetings during the pandemic (such chambers now referred to as the "Zoom Room"). In anticipation of the procedural bylaw being applied in its full capacity, outside of a declared emergency, administration began preparing these chambers to have the ability to accommodate a regular meeting of Council with full quorum.

Financial Impact

Costs associated with the upgraded Council Chambers at Town Hall were incurred in the 2020-2022 budget years and funded through grant monies.

Should the Town of Essex instead opt to lease Essex County Council Chambers (located at 360 Fairview Avenue West, Essex Centre), the cost would be approximately \$525 per month. It is important to note that the technical set up at the County Chambers would require a minimum of 3 employees to attend and run the meetings in comparison to the 1-2 employees required at Town Hall, as well as additional infrastructure equipment. The costs of this would be approximately \$8,000 annually but could vary depending on the exact staffing and equipment required. Sufficient budget exists in the Council Operating budget for 2022, Miscellaneous Services, to fund these expenditures. This is due to the cost savings realized from the change of television streaming to live streaming.

In addition if Council directs that all Special Council meetings be live streamed on a permanent going forward basis then there may be additional cost considerations for IT infrastructure and staff resources if those Special Council meetings are to be held at Town Locations other than 33 Talbot Street South (Town Municipal Building) or 360 Fairview Avenue West (County Chambers).

Finally, any future consideration to the streaming of some or all of the Committee meetings will need to take into account any additional costs associated with IT infrastructure and staff resources which have not yet been assessed or budgeted for in the current operating year.

Consultations

Chief Administrative Officer

Director, Community Services

Manager, Strategic Communications

Manager, Information Technology

Link to Strategic Priorities

- ☐ Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- ☐ Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- ☐ Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- ☐ Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- ☒ Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- ☒ Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Procedural By-law and Electronic Participation in Meetings - Legal and Legislative Services-2022-16.docx
Attachments:	
Final Approval Date:	Apr 27, 2022

This report and all of its attachments were approved and signed as outlined below:

A handwritten signature in black ink, appearing to read 'Doug Sweet', with a stylized flourish extending from the end.

Doug Sweet, Chief Administrative Officer - Apr 27, 2022 - 10:50 AM