



Town of Newmarket
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Electronic Participation in Meetings and 2021 Council/Committee of the Whole Schedule Staff Report to Council

Report Number: 2020-69

Department(s): Legislative Services

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Meeting Date: October 5, 2020

Recommendations

1. That the report entitled Electronic Participation in Meetings and 2021 Council/Committee of the Whole Schedule dated October 5, 2020 be received; and,
2. That the proposed amendments to the Town of Newmarket's Procedure By-law 2020-12 to permit electronic participation as outlined in **Attachment 1** of this report be approved; and,
3. That beginning in January 2021 or as determined by the Mayor and Chief Administrative Officer, staff be directed to facilitate only Council and Committee of the Whole, Site Plan Review Committee meetings in a hybrid manner with in-person and remote Members of Council, Staff and the public; and,
4. That staff be directed to amend the remainder of 2020 Council and Committee of the Whole meetings to commence at 1:00 PM and Site Plan Review Committee meetings to commence at 9:30 AM; and,
5. That the 2021 Council and Committee of the Whole Meeting Schedule be adopted (**Attachment 2**), noting the following for January to June 2021:
 - a. That Council meetings continue to commence at 1:00 PM; and,

- b. That Site Plan Review Committee meetings be held in the morning on the same day as Council meetings and commence at 9:30 AM; and,
6. That staff be directed to report to Council in April/May 2021 on a Policy for Electronic Participation in hybrid meetings, establishing start times for Council and Committee of the Whole meetings for July to December 2021 and resumption of hybrid meetings for Advisory Committees; and,
7. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Purpose

The purpose of this report is to seek Council's approval for amendments to the Town of Newmarket's Procedure By-law to permit participation through electronic means after the state of emergency declared under the Emergency Management and Civil Protection Act ("EMCPA") has been lifted.

This report will also provide Council with an update on measures to prepare for the partial resumption of in-person meetings and the technology requirements to conduct meetings using a hybrid approach of remote and in-person methods.

Executive Summary

This report seeks to:

1. Provide an update on the recent legislative amendments in relation to meetings.
2. Amend the Town's Procedure By-law to remove the requirement for a declared state of emergency to be in place in order for meetings to be held through electronic means.
3. Recommend a phased approach for hybrid meetings (in-person and remote participants). Phase one will include only Council Members returning to the Council Chambers in-person, with a target of December 2020. Phase one of hybrid meetings is subject to successful completion of Council Chambers hardware and software upgrades and testing by the end of November 2020.
4. Recommend that phase two of hybrid Council and Committee of the Whole meetings begin after a successful launch of phase one. It is expected that the earliest phase two may begin is in January 2021, or as determined by the Mayor and Chief Administrative Officer. Only a limited number of the public will be permitted in the Council Chambers.
5. Approve a 2021 calendar of meetings for Council and Committee of the Whole, with January to June Council and Site Plan Review Committee meetings beginning at 1:00 PM and 9:30 AM, respectively; and finally,
6. Direct staff to report back to Council in April/May 2021 with a review of the evolving landscape of hybrid meetings, start time of Council meetings for July to December 2021 meetings, and resuming in-person or hybrid Advisory Committee meetings.

Background

Electronic Participation Legislation Timeline

Electronic Participation in Municipal Council meetings has been permissible since January 1, 2018, as part of the amendments to the Municipal Act by the Modernizing Ontario's Municipal Legislation Act, 2017 ("Bill 68"). However, these amendments allowed electronic participation only with strict requirements, namely, that members participating electronically did not count towards quorum and participation was not permitted during Closed Session. Council amended the Town's Procedure By-law to allow for electronic participation and created a corresponding policy. However, the participation was limited only to the Town's Accessibility Advisory Committee.

On March 19, 2020, the Legislative Assembly of Ontario passed the Municipal Emergency Act, 2020 ("Bill 187"). This piece of legislation amended the Municipal Act, 2001 to permit members of a municipal council, local board, or committee to participate electronically in open and closed session meetings and be counted towards quorum during a declared state of emergency under the EMCPA.

On April 27, 2020, Council met remotely for the first time in an electronic Special Council Meeting. The first order of business was an amendment to the Town's Procedure By-law to permit meetings to permit electronic participation as per the requirements of Bill 187.

On July 21, 2020, the COVID-19 Economic Recovery Act, 2020 ("Bill 197") received Royal Assent. This wide-ranging piece of legislation amended numerous Acts, and more specifically, amended the Municipal Act to permit continued electronic participation by Councils after both Provincial and Municipal declared states of emergency are lifted. The declared state of emergency under the EMCPA was not renewed, and so ended on July 24, 2020. As of the date of this report, the Town of Newmarket's state of emergency remains in place.

Discussion

COVID-19 Economic Recovery Act, 2020 ("Bill 197")

With the Bill 197 amendments now in effect, these restrictions are no longer present and full electronic participation is no longer contingent on a declared state of emergency. With the lifting of the Provincial state of emergency, under the current rules of the Town's Procedure By-law, electronic participation can occur only until the Town lifts its own state of emergency. Electronic participation outside of a declared emergency requires a further amendment to the Town's Procedure By-law.

As such, Staff recommend that Council amend the Town's Procedure By-law to remove the requirement for a declared state of emergency and continue to permit electronic participation (**Attachment 1**). While the declared state of emergency may come to an end, it is clear that the need for remote participation in meetings and continued physical

distancing will remain for some time. Additionally, the amendment will allow for members to participate remotely after the health risks of the pandemic have ended. This will enable members to join a meeting remotely when they would be absent otherwise, such as during travel or due to a minor illness.

In addition to the required electronic participation amendments to the Procedure By-law, there are additional housekeeping amendments required to allow greater flexibility for the agendas for electronic meetings.

Proxy Voting Not Recommended as Electronic Participation makes it Redundant

In addition to the amendments regarding electronic participation, Bill 197 also included a new provision which allows proxy voting for municipal councils. This allows for a member to assign a proxy to vote on their behalf if they will be absent from a meeting. A municipal council needs to amend the Procedure By-law, if it wishes to use proxy voting. A process to enable proxy voting must be established by the clerk.

Bill 197 includes a number of rules related to proxy voting. A member who has assigned a proxy is counted as absent and does not count towards quorum. Since the member is considered absent, this absence is counted towards the three months after which their office is vacated. A member would need a Council resolution to allow their absence for longer than three months, even with a proxy assigned to vote on their behalf.

Proxy voting is entirely new and untested for Ontario municipal councils. In addition to the amendments to the Procedure By-law and the establishment of a proxy voting process, additional amendments to other related policies and by-laws may be required. For instance, Council's Code of Conduct does not contemplate violations caused by proxy voting. Since the concept is new to all Ontario municipalities, there are no established best practices related to proxy voting, nor are there experiences to draw upon for the creation of policies and procedures. The City of Toronto, Mississauga, and all other York Region municipalities are not proceeding with proxy voting at this time.

At this time, staff do not recommend the amendment of the Procedure By-law to allow proxy voting. Remote electronic participation allows for a high degree of accessibility for Councillors, as they no longer need to be present in the meeting room. As such, proxy voting likely does not provide an additional benefit for members who cannot attend a meeting in person, yet it adds additional complexity to meeting procedures. If Council desires the addition of proxy voting to the Town's Procedure By-law, staff recommend an additional review be conducted before the amendment, to ensure an appropriate process can be established.

Public Participation during Pandemic

The restrictions put in place due to the pandemic and the legislative amendments related to remote meetings quickly led to unprecedented changes in how the public engages with Council. Due to the rapidly changing circumstances, public engagement Electronic Participation in Meetings and 2021 Council/Committee of the Whole Schedule

has evolved throughout the pandemic period. For the Special Council meetings in April and May, traditional deputations were replaced with written deputations, where residents could submit their comments in written form, but have them verbally read out at the meeting by the Mayor.

As familiarity with electronic meeting platforms such as Zoom increased throughout the pandemic for staff, Council and the public, new procedures were developed to allow the public to join the meeting electronically safely and securely. Staff provided one-on-one training sessions to deputants before the meeting so that residents would be comfortable joining the Council meeting live. Residents also were able to submit correspondence in the traditional fashion, with written deputations being replaced by remote deputations.

In order to reproduce the experience of an in-person public meeting, staff developed procedures to allow members of the public to join the remote meeting live, without prior notice.

In addition to remote Committee of the Whole and Council meetings, the pandemic led to the transition to a remote public meeting format. On June 29, 2020, Council held its first public planning meeting and considered two applications.

As of September 1, Town Committees and Boards resumed their regular schedules using the Zoom meeting process described below. Staff recommend that Committees and Boards continue to meet through Zoom.

The March 18, 2020 Council motion suspended Committee and Board meetings through August 2020, with meetings occurring to consider urgent matters as determined by the Mayor and Chief Administrative Officer. As Board and Committee meetings are not typically video streamed and recorded, an alternative process was developed. Zoom's webinar function was used, which allows for the public to join the meeting and observe. Members of the public can hear and see the meeting, but they cannot join in the discussion. However, they are still able to indicate to the meeting administrator that they would like to speak, so that they can participate in the meeting at the appropriate time. This process has proved effective at both facilitating the meeting and allowing public participation in a secure environment.

In-person and Remote Electronic Participants ("hybrid" meetings)

To prepare for the eventual re-opening of the Municipal Offices and the facilitation of hybrid meetings with a mix of both in-person and electronic participants, Staff have been working with the Town's audiovisual vendor to facilitate upgrades to the technology. These upgrades are presently scheduled for completion by the end of November.

Staff recommend a phased approach for hybrid meetings, with Council returning to the Council Chambers in-person in December 2020.

Prior to inviting any Members of Council, staff or the public into the Council Chambers, staff have been working with York Region Public Health to receive advice on physical distancing and safety measures to ensure the safe re-opening of the space.

Based on current physical distancing requirements, the Council Chambers could accommodate all Members of Council by requiring all staff (except for the Clerk) to join the meeting virtually.

As such, allowing Council to return to the Council Chambers first will give staff an opportunity to ensure that the technology, physical distancing and safety measures are functioning as intended.

Phase two of hybrid meetings would require members of the public to register in advance of the meeting. Staff expect that the public may be able to attend Council and Committee of the Whole meetings in-person beginning in January 2021.

The total number of members of the public in attendance would be restricted and monitored by having the public register prior to attending the meeting.

Phase two of hybrid meetings is contingent on a successful implementation of phase one as noted above. To this end, while staff are targeting phase two to begin in January 2021, it is recommended that the Mayor and Chief Administrative Officer be given the authority to establish when the public will be permitted back into the Council Chambers.

Best practices for hybrid meetings will be established as they become more common.

- Hybrid meetings are new to municipal Councils, which means that best practices will continue to evolve over time. At present, staff are not aware of any municipality that has formalized a criteria for Members' remote participation during a non-emergency/non-Pandemic period. Examples of such criteria include the number of meetings a Member can participate through electronic means or establishing a deadline to notify the Clerk and Chair to advise that the Member will be participating electronically.

Staff will continue to monitor other municipal councils' policies and/or criteria and report back to Council in April/May 2021.

Municipal Comparison

At the time this report was authored, staff were able to gather the following information from other municipalities. Each municipality was asked to identify when they will begin resuming in-person Council meetings.

Municipality	Date or estimated timeframe for Council to participate in person	Date or estimated timeframe for Members of the Public to participate in person	Other Notes
Aurora	August 25, 2020	August 25, 2020	<ul style="list-style-type: none"> • Deputants need to pre-register • Plexi-glass installed between Councillors • Council, staff & public asked to wear masks • Electronic participation is still available to delegates, applicants, consultants etc.
East Gwillimbury	Undetermined	Undetermined	<ul style="list-style-type: none"> • All meetings will be electronic for the remainder of 2020
Georgina	Undetermined	Undetermined	
King	Undetermined	Undetermined	<ul style="list-style-type: none"> • Not exploring in person meetings at this time
Markham	Undetermined	Undetermined	
Richmond Hill	November 2020	Undetermined	
Vaughan	March 2020	Undetermined as Municipal Offices are currently closed to the public until January 2021	<ul style="list-style-type: none"> • Procedure by-law requires the Chair to attend in person • Council has always had the option to attend in person
Whitchurch-Stouffville	Undetermined	Undetermined	
York	Undetermined	Undetermined as Municipal Offices are currently closed to the public until January 2021	

Municipality	Date or estimated timeframe for Council to participate in person	Date or estimated timeframe for Members of the Public to participate in person	Other Notes
Mississauga	September 2020	September 2020	<ul style="list-style-type: none"> • Council, General Committee, Audit Committee and Budget Committee will return to in person meetings • Option to participate electronically is still available • Registration is required for members of the public, as there is reduced capacity
Brampton	September 16, 2020		
Peterborough	September 2020	September 2020	<ul style="list-style-type: none"> • Plexi-glass barriers installed between Council Members and Staff • Pre-registration is required

Council, Committee of the Whole and Statutory Public Planning Meeting Times should remain the same to reduce public confusion.

Since the resumption of regular Committee of the Whole and Council meetings in June 2020, meetings have been held at 1:00 PM. Statutory Public Planning meetings have been included as the first item of Council agendas.

Staff recommend that Committee of the Whole and Council meetings continue to be held at 1:00 PM until the end of June 2021. During this period, changing meeting times may create additional confusion for the public. For the same reasons, Staff recommend that Statutory Public Planning meetings continue to be held at the beginning of Council meetings. Staff will continue to review meeting times throughout 2021, as the situation evolves, and to ensure that this meeting schedule remains effective, staff will report to Council in April/May 2021 on meeting times.

Electronic Participation in Meetings and 2021 Council/Committee of the Whole Schedule

Site Plan Review Committee meetings are held as required when applications need to be considered. Previously, these meetings were held on the same day as Council at 2:00 PM. Staff recommend following this practice and scheduling Site Plan Review Committee meetings for the same day as Council meetings at 9:30 AM.

Council is required to adopt a 2021 Council Meeting Schedule

Each year, Council approves a draft schedule of meetings for the upcoming year. There may be occasions when additional special meetings are required, and these meetings are called on an as required basis. Additionally, the Procedure By-law provides that special meetings may be called by the Mayor or upon receipt of a petition signed by a majority of the Members of Council.

Attachment 2 outlines the draft meeting schedule for 2021. Variations of the regular schedule include:

- In March, there is a two week gap due to March Break;
- A Committee of the Whole meeting is scheduled for Tuesday, May 25, 2021 as the offices will be closed on Monday, May 24, 2021 for Victoria Day;
- A Council meeting is scheduled for Tuesday, October 12, 2021 as the offices will be closed on Monday, October 11, 2021 for Thanksgiving.

The Federation of Canadian Municipalities (FCM) conference is typically held during the first or second week of June, however, FCM has not yet confirmed these dates for 2021. For that reason, the 2021 FCM conference dates have not been included in the calendar.

Additionally, the calendar includes times for meetings held between January and June, with Council starting at 1:00 PM and Site Plan Review Committee starting at 9:30 AM. Staff recommend that the schedule remain consistent to reduce public confusion around changing meeting times. Staff will report back to Council in April/May 2021 to recommend start times for the meetings scheduled between July and December.

Conclusion

This report seeks Council's approval to amend the Procedure By-law to remove the emergency requirement for electronic participation in meetings (**Attachment 1**), and for Council to approve a schedule of 2021 Council and Committee of the Whole meetings (**Attachment 2**).

Business Plan and Strategic Plan Linkages

This report aligns with all of Council's six Strategic Priorities for this term, as Council's decision points at meetings assists in fulfilling these Priorities for the Town.

Consultation

Planning and Building Services Staff were consulted in this report.

Human Resource Considerations

None.

Budget Impact

Technological upgrades will be completed within existing operating budgets.

Following the advice of York Region Public Health officials, there may be additional budget impacts should staff be required to install plexi-glass barriers around the Council table or in other areas in the Council Chambers.

Attachments

Attachment 1 - Procedure By-law Amendment

Attachment 2 - 2021 Council and Committee of the Whole meeting schedule

Approval

Lisa Lyons, Director of Legislative Services/Town Clerk

Mike Mayes, Acting Commissioner of Corporate Services

Contact

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