

Electronic and Physical Council and Committee Meetings during current COVID-19 Emergency

Date: May 20, 2020

To: City Council

From: City Solicitor

Wards: All

SUMMARY

This report responds to Council's request for the City Solicitor to report on the possibility of holding future City Council Meetings and Standing Committee Meetings either in person or virtually while taking into account all physical distancing guidelines, in consultation with the Medical Officer of Health.

RECOMMENDATIONS

The City Solicitor recommends that:

This report be received for information

FINANCIAL IMPACT

This report has no financial impact.

DECISION HISTORY

At its meeting of April 30, 2020, City Council considered Item CC20.1 "Amendments to Procedures to Enable Remote Electronic Participation in Meetings during an Emergency"

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC20.1>

Council amended this item to "request the City Solicitor, in consultation with the Medical Officer of Health, to report on the possibility of holding future City Council Meetings and

Standing Committee Meetings in person and or virtually while taking into account all Physical Distancing guidelines and related Public Health Directives."

COMMENTS

The City of Toronto Act, 2006 (COTA) allows City Council's procedure by-law to permit members of Council and of Council committees to participate electronically in meetings. However, subsection 189(4) and (4.1) generally prohibit members participating electronically from being counted to determine whether a quorum of members is present and from participating in closed meetings. Accordingly, meetings at which a majority of members participate electronically are not generally permitted.

Recent amendments to section 189 of COTA by the Municipal Emergency Act, 2020, enacted on March 19, 2020, authorized City Council to amend its procedure by-law to allow for members participating electronically in meetings during a declared provincial or municipal emergency, to be counted in determining whether or not a quorum is present and to participate in closed meetings where a meeting is permitted to be held in camera. These amendments allow for fully electronic meetings or meetings at which a majority or more of members participate electronically, but only provide such authority during a declared emergency.

On March 17, 2020, the Premier of Ontario declared a state of emergency under section 7.0.1(1) of the Emergency Management and Civil Protection Act in response to the novel coronavirus (COVID-19). On March 23, 2020, Mayor Tory declared an emergency under section 4 of the Emergency Management and Civil Protection Act, and section 59-5.1 of City of Toronto Municipal Code Chapter 59, Emergency Management similarly in response to COVID-19. As at the time of writing this report, both the provincial and City emergency declarations remain in effect.

At its meeting of April 30, 2020, City Council enacted amendments to Chapter 27, Council Procedures, to give effect to the recent COTA amendments, thereby permitting electronic participation in meetings of Council and Council committees during a declared emergency. Accordingly, City Council and Council committees have the requisite authority to conduct meetings in which a majority or more of the members participate electronically by telephone or by video conference without being physically present at the meeting. This authority will continue while either a provincial or municipal emergency is in effect for the City of Toronto.

COTA continues to require that Council and Council committee meetings be open meetings regardless of whether they are held physically or through electronic participation. In a decision on a complaint about a meeting held with electronic participation on April 2, 2020 at the Township of Russell, the Ontario Ombudsman concluded that a meeting by electronic participation does not contravene the open meeting rules provided that adequate access and transparency is provided to the public including adequate notice.

The recent amendments by Council to Chapter 27 merely permit electronic participation in Council and Council committee meetings; they do not require it. However, under the

current COVID-19 emergency other factors must be taken into account when determining whether members should attend meetings in person.

Given the infectious nature of COVID-19, all public health officials, including the Toronto's Medical Officer of Health and the Chief Medical Officer of Health of Ontario have provided significant direction on the need for social distancing to prevent further community spread. This includes general direction to stay at home where possible, limit non-essential trips in the community, and maintain a minimum of 2 metre distance between others.

Toronto's Medical Officer of Health has also issued a Class Order under section 2.2(5.0.1) of the Health Protection and Promotion Act requiring self-isolation of people who are diagnosed with, are awaiting test results and have symptoms of, or have reasonable grounds to believe they have symptoms of COVID-19, or are in close contact with such a person.

Furthermore, the Public Health Agency of Canada has provided guidance for businesses and workplaces based on advice from the World Health Organization and the Centers for Disease Control and Prevention (CDC) on public health assumptions that reflect the currently available scientific evidence and expert opinion. It notes that workplaces and businesses can contribute to the spread of the virus that causes COVID-19 and should implement appropriate public health measures to prevent and reduce its spread. Measures can include adjusting workplace policies and procedures to reduce physical contact, such as teleworking arrangements, flexible hours, staggering start times, use of email, video and teleconferencing and modifying infrastructure to enhance physical distancing by 2 metres. Similar advice is contained in Toronto Public Health's guidance for workplaces documents.

While the City has made efforts to implement this advice and guidance in its workplaces, including closing most of its buildings such as City Hall to the public so as to prevent the virus's spread, government services and operations continue to be permitted under Ontario Regulation 82/20 which designates essential businesses and services. All such essential businesses and services are required to operate in accordance with all applicable laws, including the Occupational Health and Safety Act, and in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing.

Additionally, the Province has filed Ontario Regulation 52/20 (currently extended to expire on May 29, 2020) which prohibits "an organized public event" and "social gatherings" of more than 5 people, with limited exceptions. A Council or committee meeting is clearly not a social gathering and, in light of City Hall currently being closed to the public during the COVID-19 emergency, members of the public are not able to physically attend Council and Committee meetings, thereby making any physical Council or Council committee meetings at which only members are present, unlikely to be subject to the restrictions of O.Reg. 52/20. Nonetheless, having such physical Council or committee meetings at the present time would seem contrary to the spirit and intention of Regulations 82/20 and 52/20, which are clearly intended to require compliance by the public with health recommendations and limit even moderate gatherings of people for the purpose of stopping the spread of COVID-19.

A decision to continue meeting virtually until the public health advice changes would be consistent with both the Province's decision to provide legislative tools to municipalities to conduct electronic meetings during a declared emergency, and the strong public health advice and directives. Public health guidance suggests that, where possible, physical distancing and use of telephone and video conferencing are recommended in workplace settings. City staff who can be working from home and have been directed to continue to do so until instructed to do otherwise.

All Council and Council committee meetings held through electronic participation of members must continue to be open meetings by providing access to the public through electronic means. Adequate public notice and live streaming of meetings are likely to provide sufficient transparency to the public to meet the open meeting requirements. Where Chapter 27, Council Procedures, allows for public deputations such as at meetings of Council committees, the public should also be provided the opportunity to make such deputations using electronic means such as telephone or video conferencing.

In conclusion, during the current declared COVID-19 emergencies, City Council and its committees have the legal authority to hold their meetings entirely with electronic member participation. Although COTA requires that council meetings be open to the public, in the current circumstances where the public is excluded from City Hall, a Council meeting that satisfied the "open to the public" requirement by virtual means is arguably not a "public gathering" but only a gathering of its members. This interpretation, while not without doubt, suggests that a meeting could be conducted with members being physically present, or with any number of members participating electronically. In person Council and Committee meetings are, however, not recommended during the declared emergency until the advice of the Toronto Medical Officer of Health changes.

This report has been prepared in consultation with the Medical Officer of Health.

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SIGNATURE

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