



THE REGIONAL MUNICIPALITY OF NIAGARA SPECIAL COUNCIL AGENDA

CL 13-2020

Thursday, July 30, 2020

3:30 p.m.

Meeting will be held by electronic participation only

All electronic meetings can be viewed on Niagara Region's website at:

<https://www.niagararegion.ca/government/council/>

Due to the efforts to contain the spread of COVID-19 the Council Chamber will not be open to the public to attend Council meetings until further notice. To view live stream meeting proceedings, please visit: [niagararegion.ca/government/council](https://www.niagararegion.ca/government/council/)

Pages

1. CALL TO ORDER

2. ADOPTION OF AGENDA

2.1 Changes in Order of Items

3. DISCLOSURES OF PECUNIARY INTEREST

4. CLOSED SESSION

4.1 Confidential Verbal Update

A Matter of Advice that is Subject to Solicitor-Client Privilege & A Matter of Litigation or Potential Litigation under s. 239(2) of the Municipal Act, 2001 - Legal Advice respecting litigation concerning Former Senior Administration Officials Employment Contracts

4.2 Confidential Verbal Update

A Matter concerning Personal Matters about identifiable individuals under s. 239(2) of the Municipal Act, 2001- Whistleblower Policy Complaints

4.3 Confidential CSD 52-2020

A Matter of Advice that is Subject to Solicitor-client privilege under s. 239(2) of the Municipal Act, 2001 - 2020-RFP-60 Liquid Biosolids and Residuals Management Program Procurement

5. BUSINESS ARISING FROM CLOSED SESSION

6. ITEMS FOR CONSIDERATION

- 6.1 CLK 9-2020 3 - 10
Amendment to Procedural By-law to Permit Electronic Participation in Meetings pursuant to Bill 197, COVID-19 Economic Recovery Act

7. CHIEF ADMINISTRATIVE OFFICER'S REPORT(S)

None.

8. BY-LAWS

- 8.1 Bill 2020-51 11 - 13
A by-law to amend By-law 120-2010, The Procedural By-law to permit electronic meeting participation.

- 8.2 Bill 2020-52 14
A by-law to adopt, ratify and confirm the actions of Regional Council at its special meeting held on July 30, 2020.

9. ADJOURNMENT

If you require any accommodations for a disability in order to attend or participate in meetings or events, please contact the Accessibility Advisor at 905-980-6000 ext. 3252 (office), 289-929-8376 (cellphone) or accessibility@niagararegion.ca (email).

Subject: Amendment to Procedural By-law to Permit Electronic Participation in Meetings pursuant to Bill 197, COVID-19 Economic Recovery Act

Report to: Regional Council

Report date: Thursday, July 30, 2020

Recommendations

1. That the amendments to Niagara Region Procedural By-law 120-2010, as amended, as outlined in Appendix 1 to Report CLK 9-2020 to facilitate electronic meeting participation during the COVID-19 pandemic and recovery period **BE APPROVED** for a period of one-year from the termination of the Provincial Declaration of Emergency;
2. That staff **BE DIRECTED** to provide a report considering permitting electronic participation in meetings on a permanent basis before the expiry of the one-year period; and
3. That the necessary by-law **BE PRESENTED** to Council for consideration.

Key Facts

- The Province enacted the Municipal Emergency Act on March 19, 2020, which amended the provisions of the Municipal Act regarding electronic participation to allow members that participate electronically to count towards quorum, and participate in closed session, in circumstances when an emergency has been declared.
- On March 26, 2020, the Region's Procedural By-law was amended to permit members of Council to participate in both open and closed meetings electronically and be counted towards quorum during the period of the emergency declared by the Province of Ontario pursuant to section 7.0.1 of the Emergency Management and Civil Protection Act, related to the COVID-19 Pandemic.
- On July 21, 2020, Bill 197, COVID-19 Economic Recovery Act, received royal assent and included provisions to amend the Municipal Act 2001, to allow members of municipal councils to continue to participate electronically in both open and closed meetings and be counted towards quorum, even in the absence of an emergency.
- Notice of the by-law amendment was provided at the July 23, 2020, Regular Council meeting as required.

- This report seeks Council's approval to allow electronic participation in meetings to be permitted for a one-year period (from July 24, 2020) at which time staff will provide a report with considerations for allowing electronic participation permanently.

Financial Considerations

Costs associated with enhancing the technology in the Council Chamber to further refine electronic participation will be accommodated within existing budgets.

Analysis

In response to the COVID-19 pandemic, the Province enacted the Municipal Emergency Act on March 19, 2020, which amended the provisions of the Municipal Act regarding electronic participation to allow members that participate electronically to count towards quorum, and participate in closed session, in circumstances when an emergency has been declared.

On March 26, 2020, the Region's Procedural By-law was amended to permit members of Council to participate in both open and closed meetings electronically and be counted towards quorum during the period of the emergency declared by the Province of Ontario pursuant to section 7.0.1 of the Emergency Management and Civil Protection Act, related to the COVID-19 Pandemic.

On July 21, 2020, Bill 197, COVID-19 Economic Recovery Act, received royal assent. This bill included provisions to amend the Municipal Act 2001, to provide municipalities with new permissive authority related to electronic meetings. The Bill repealed the prior rules for electronic participation and substituted new rules that permit Council to amend its procedures to permit a member of a council, of a local board or of a committee of either of them, to participate electronically in a meeting to the extent and in the manner set out in the by-law even in the absence of an emergency.

The Bill also provides that:

- A member 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
- A member can participate electronically in a meeting that is open or closed to the public.

The current procedural by-law amendment to allow electronic meetings expires with the termination of the provincial declared emergency. The Province of Ontario terminated the Declaration of Emergency effective July 24, 2020. This means that in order to continue to hold meetings by electronic participation, a procedural by-law amendment is necessary. Notice of the amendment was provided at the July 23, 2020, Regular Council meeting as required. The Bill includes the ability for a municipality to hold a special meeting to amend an applicable procedure by-law for the purposes of including provisions related to electronic meetings.

Based on public health advice and physical distancing requirements to limit the spread of COVID-19, remote meetings are the preferred method for meetings. Although Niagara has entered Stage 3, the province in their Stage 3 Framework continues to advise “Working from home or remotely as much as possible”. Limiting people who don’t need to be in our buildings is therefore still recommended. The continued risk of community transmission posed by COVID-19 and the second wave of infection that is anticipated to occur provides sound reasoning to have all Niagara Region Council and Committee meetings held electronically.

Council and Standing Committee meetings have been held electronically since March and May respectively. Currently all members of Council participate electronically with the Clerk, Regional Chair or Committee Chair, Chief Administrative Officer and additional staff as required being present in the Council Chamber. To date staff have encountered little difficulty with this meeting format aside from some minor initial connectivity issues experienced intermittently by Councillors and/or delegations.

The current Council Chamber configuration will not allow for all Council members to physically attend meetings and still adhere to physical distancing requirements. Therefore reliance on electronic participation in meetings will likely be required for the foreseeable future.

The current technology in the Council Chamber will not facilitate a meeting with additional Council members present. Staff are utilizing a stationary camera for viewing of the Council Chamber which only allows for a specific camera range. IT staff have been actively working with the vendor to have equipment upgrades completed; however, this has been hampered by the unavailability of the equipment required for the Council Chamber system and availability of the vendor to complete the work due to the pandemic.

The continuation of electronic participation in meetings will afford an opportunity to consider whether some limitations or conditions should be placed on electronic participation once the return to in-person meetings in Council Chamber is possible.

In addition to the changes noted above, Bill 197 also introduces new rules regarding proxy voting at Council meetings. These changes represent a new policy direction within the Municipal Act with significant governance implications. As a result, Clerk's Office staff will undertake a thorough review of the rules and implications of proxy voting and provide a report in future examining the issue in detail.

Alternatives Reviewed

Council could decline to approve the proposed by-law amendment and not permit electronic participation in meetings to continue. As the Province has terminated the declaration of emergency, Council and Committees would be required to attend all meetings in person. This is not recommended as it would be in conflict with current public health advice.

Relationship to Council Strategic Priorities

This report has been prepared as a response to recent Municipal Act amendments; however, it does align with Council's Strategic Priority of Sustainable and Engaging Government.

Other Pertinent Reports

CLK 5-2020 Procedural By-law Update for Electronic Meeting Participation

Prepared and Recommended by:
Ann-Marie Norio
Regional Clerk

Submitted by:
Ron Tripp, P.Eng.,
Acting Chief Administrative Officer

This report was prepared in consultation with Donna Gibbs, Director, Legal and Court Services.

Appendices

Appendix 1 Draft Procedural By-law Amendment

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. <>

A BY-LAW TO AMEND BY-LAW 120-2010, THE
PROCEDURAL BY-LAW TO PERMIT ELECTRONIC
MEETING PARTICIPATION

WHEREAS subsection 238(2) of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended, provides that every municipality shall pass a procedure by-law for governing the calling, place and proceedings of meetings;

WHEREAS By-law 2020-16, being a by-law to amend the Procedural By-law 120-2010 was passed on March 26, 2020 to allow electronic participation in meetings during the Provincial Declaration of Emergency pursuant to the *Emergency Management and Civil Protection Act, 2020*;

WHEREAS on July 21, 2020, *Bill 197, COVID-19 Economic Recovery Act*, received royal assent and included provisions to amend the *Municipal Act 2001*, to allow members of municipal councils to continue to participate electronically in both open and closed meetings and be counted towards quorum, even in the absence of an emergency;

WHEREAS subsection 238(3.1) of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended, provides that the applicable procedural by-law may provide that a member of council can participate electronically in a meeting to the extent and in the manner set out in the by-law;

WHEREAS Regional Council deems it advisable to amend By-Law 120-2010, The Procedural By-Law to allow for electronic participation in meetings for a one-year period in consideration of public health advice to limit the spread of COVID-19.

NOW THEREFORE the Council of The Regional Municipality of Niagara enacts as follows:

1. That section 2.8 of The Procedural By-law be amended to read as follows:

A Council **or Committee** member who participates in a **Standing** Committee or Council meeting remotely via electronic means (e.g. audio and/or video), will have the same rights and responsibilities as if he or she were in physical attendance, including the right to vote.

2. That Section 2.10 of The Procedural By-law be deleted and the following be added:

~~Electronic Participation shall only be permitted during the period of the emergency declared by the Province of Ontario pursuant to section 7.0.1 of the Emergency Management and Civil Protection Act, related to the COVID-19 pandemic.~~

Electronic Participation shall only be permitted for a one-year period from the termination of the Provincial Declaration of Emergency being July 24, 2020 in consideration of the public health advice to limit the spread of COVID-19.

3. That section 2.11 of The Procedural By-law be amended to read as follows:

Electronic Participation during the period shall **only** be permitted for all **Standing** Committee meetings and any special, emergency or regular Council meeting.

4. That section 2.12 of The Procedural By-law be amended to read as follows:

The Regional Chair and/or **Standing** Committee Chair shall not be permitted to participate electronically **at any meeting over which they are presiding**.

- (a) **A Committee Chair (Co-Chair) may participate electronically at any meeting subject to consultation with Clerk's staff and the staff representative for that Committee in advance to ensure appropriate procedures are in place for electronic participation.**

5. That section 2.13 of The Procedural By-law be amended to read as follows:

The member ~~of Council~~ who wishes to participate in a meeting electronically shall provide the Clerk a minimum of 24 hours' notice in advance.

6. That this by-law shall come into force and effect on the day upon which it is passed.

7. The amendments effected by this By-law shall be deemed repealed and no longer in force and effect at 12:01 a.m. on July 24, 2021 unless otherwise extended or repealed by resolution of Council.

THE REGIONAL MUNICIPALITY OF NIAGARA

James Bradley, Regional Chair

Ann-Marie Norio, Regional Clerk

Passed: <date>

DRAFT

THE REGIONAL MUNICIPALITY OF NIAGARA

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THE REGIONAL MUNICIPALITY OF NIAGARA

James Bradley, Regional Chair

Ann-Marie Norio, Regional Clerk

Passed: <date>

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. <>

A BY-LAW TO ADOPT, RATIFY AND CONFIRM THE
ACTIONS OR REGIONAL COUNCIL AT ITS SPECIAL
MEETING HELD ON JULY 30, 2020

WHEREAS subsection 5 (3) of the Municipal Act, S.O. 2001, Ch. 25, as amended, provides that, except if otherwise authorized, the powers of Regional Council shall be exercised by by-law; and,

WHEREAS it is deemed desirable and expedient that the actions of Regional Council as herein set forth be adopted, ratified and confirmed by by-law.

NOW THEREFORE the Council of The Regional Municipality of Niagara enacts as follows:

1. That the actions of the Regional Council at its special meeting held July 30, 2020, including all resolutions or motions approved, are hereby adopted, ratified and confirmed as if they were expressly embodied in this by-law.
2. That the above-mentioned actions shall not include:
 - a) Any actions required by law to be taken by resolution; or
 - b) Any actions for which prior Local Planning Appeal Tribunal approval is required, until such approval is obtained.
3. That the Chair and proper officials of The Regional Municipality of Niagara are hereby authorized and directed to do all things necessary to give effect to the above-mentioned actions and to obtain approvals where required.
4. That unless otherwise provided, the Chair and Clerk are hereby authorized and directed to execute and the Clerk to affix the seal of The Regional Municipality of Niagara to all documents necessary to give effect to the above-mentioned actions.
5. That this by-law shall come into force and effect on the day upon which it is passed.

THE REGIONAL MUNICIPALITY OF NIAGARA

James Bradley, Regional Chair

Ann-Marie Norio, Regional Clerk

Passed: <date>