



Committee of the Whole Report For the Meeting of March 19th, 2020

To: Committee of the Whole
From: Chris Coates, City Clerk
Subject: Council Processes

Date: March 17, 2020

RECOMMENDATION

That Council forward to the March 19, 2020 daytime Council meeting the following recommendations:

1. That Council give first second and third reading to Council Procedures Amendment (No. 1) Bylaw No. 20-053.
2. That staff undertake required advertising of the proposed Bylaw in accordance with section 124(3) of the Community Charter.
3. That Council suspend the holding of Public Hearings in accordance with the Class Order on COVID-19 from the Office of the Provincial Health Officer until further notice.
4. That Council suspend the Request to Address Council and Question Period sections of Council meeting agendas for in person participation until further notice.

EXECUTIVE SUMMARY

Local governments in British Columbia operate primarily under the authority of the *Community Charter* and *Local Government Act*. Unless permitted under section 90 of the *Community Charter* all meetings of council and council committees are open to the public. The city live streams all of Council's open Committee of the Whole and Council meetings each time. These webcasts may be viewed by the public live during the meeting or the archived webcasts may be viewed on the City website at www.victoria.ca.

The British Columbia Medical Health Officer passed the Order attached as Appendix A to this report on March 16, 2020 in response to the COVID-19 pandemic. This order has implications for local government including implications on the conduct of council's in open meetings.

The purpose of this report is to seek Council's approval to modify processes to comply with the Provincial Health Officer's Order, while maintaining the integrity and transparency of the processes in keeping with the legislative requirements of the *Community Charter* and *Local Government Act*.

To accomplish these objectives staff are recommending Council approve amendments to the Council Procedures Bylaw to permit the full electronic participation of all members of Council; establish the ability to waive the City's Procedures Bylaw rules by a majority vote of Council if

circumstances dictate and in keeping with best practices of other local governments; and during the pandemic, suspend public hearings and request to address council and question period participation to limit gatherings (council and committee of the whole meetings) to under 50 persons. Council and Committee of the Whole meetings would continue to be live streamed and available to the public to view and comments can be made to council by mail or email during this uncertain period.

Since the Health Officer's Order, the City's many Advisory Bodies cannot meet the open meeting requirements of the Community Charter as their meetings are not webcast. As such those meetings cannot take place until further notice.

Local governments across the region and beyond are actively involved in process reviews to adapt to the changing circumstances brought about by the COVID-19 pandemic.

PURPOSE

The purpose of this report is to seek Council approval to:

1. Comply with the British Columbia Medical Health Officer's Order, attached as Appendix A, as it pertains to gatherings of more than 50 people by suspending public hearings and in-person participation at Council meetings in the Request to Address Council portion of the meeting.
2. Amend the Council Procedures Bylaw to increase the number of council member electronic participation to enable all Council members to electronically participate in Committee of the Whole and Council meetings at the same time should the need to do so arise.

BACKGROUND

Local government Council and Council Committee meetings are required to be open to the public unless closed under the very specific provisions of section 90 of the *Community Charter*.

The *Community Charter* requires each Local Government to enact bylaw governing certain proceedings of council (Council Procedures Bylaw). Under section 128 of the Charter, a municipality may permit, by bylaw, for members of council or a council committee who are unable to attend at a council meeting or a council committee meeting to participate by means of electronic or other communication means. Under the Charter, when a member participates by means of electronic or other communication facilities, the facilities must enable the meeting's participants to hear, or watch and hear, each other and must also enable the public to hear, or watch and hear, the participation of the member during meetings open to the public.

The current Council Procedure Bylaw, attached as Appendix B, sets out procedures for Committee of the Whole and Council meetings. Section 9 of the Bylaw establishes rules for electronic participation of Council members at Council meetings. Under section 9, no more than two Council members may participate electronically at a Council meeting if a majority of Council members are physically present at the meeting. This provision has also been applied to electronic participation at Committee of the Whole meetings.

British Columbia's Provincial Health Officer issued an Order on March 16th that applies to local governments and among other things, limits gatherings to a maximum of 50 people due to the COVID-19 pandemic. This creates the need to review and revise Council meeting processes while the order is in effect.

ISSUES AND ANALYSIS

Electronic Participation by Council Members

The Order necessitates that Council consider altering current practices to ensure business continuity and to be able to conduct decision making remotely should circumstances warrant that. Fundamental to that is ensuring a sound legal process, as well as maintaining transparency for the public and in keeping with open meeting requirements of the *Community Charter*.

The recommended approach to remove limits on electronic participation of Council members is important to ensure that the pandemic does not impact important decision making. In addition, it reduces the notice required to be given by members of council to participate electronically from 72 hours to 24 hours which coincides with the notice of special meeting requirements of the *Community Charter*. Current technology enables staff to be far more responsive to a request than 24 hours, however if all members of council were to opt to participate at the same time, 24 hours would be required to ensure all members are trained appropriately on the technology and staff can facilitate such a meeting. The City has the internal technology to facilitate these audio meeting capabilities and a well-established live webcast system for Council's meetings enabling the open meeting requirements to be met even though attendance at the meeting by the public may not be possible under the Health Officer's Order.

Suspending (Council Procedures Bylaw) Rules of Procedure

A relatively common practice in Council Procedure Bylaw is to enable Council to suspend the rules of procedure by a motion of Council during a meeting. To do so, the Council Procedures Bylaw must provide for this ability. A motion of this nature could be by majority vote, by two-thirds vote or by unanimous vote. The rules in question are not statutory rules but rather the city's rules around meeting procedures. A common example of this is the softening of the bylaw requirements to enable a "workshop" approach to issues. Another advantage of having the technical ability to suspend the rules to respond to some other unique circumstance. Staff are recommending wording from the District of Saanich Bylaw enabling the suspension of Procedure Bylaw rules but of course, not rules established in Provincial legislation which cannot be varied by Council. and using a majority vote to determine. This approach is also in keeping with the Robert's Rules of Order around ensuring the will of the majority is reflected.

An amendment to the Council Procedure Bylaw is attached as Appendix C that accomplishes the recommendations above for electronic participation and suspension of the rules of procedure. Bylaws of this nature are required to be advertised pursuant to the Community Charter. In order to facilitate the electronic participation in a timely manner staff are also recommending forwarding the proposed Bylaw to the daytime meeting for introductory readings.

Public Hearings

The limits placed on gatherings capped at 50 persons eliminates the ability to comply in the instance of a public hearing. Public hearings cannot be restricted in size in terms of numbers of people who wish to attend or speak. Public Hearings are a statutory requirement that cannot be waived. There is no appropriate alternative to substitute in these circumstances as the cornerstone of a public hearing is the ability to hear views of others and respond. A written submission only process is not considered suitable in meeting the public hearing legislative requirements which is the highest form of public submission that is subject to the most stringent requirements.

Staff are recommending a suspension of public hearings until further notice such as a change to the Health Officer's Order that would enable the unrestricted in-person participation or a legislative change.

Despite the recommendation, city staff will continue to process all applications received. The inability to conduct public hearings during the pandemic could result in a back up of matters for public hearings once it is appropriate to do so. Extra meetings are able to be established to move more applications through in a more timely manner.

Request to Address Council and Question Period

The Request to Address Council and Question Period sections are an open opportunity to speak to Council on any subject. The Council Procedures Bylaw does not place limits on the number of speakers who may address Council at any given meeting. There are no legal requirements around Request to Address Council or Question Period, it is a discretionary action authorized in the Council Procedure Bylaw. In keeping with the intent of the Health Officer's Order and in recognition that those interested can communicate their messages and questions to Council by mail or email, staff are recommending suspending these in person public participation opportunities until further notice.

Advisory Bodies to Council

The numerous Advisory Committees and Task Forces that have been established fall under the Community Charter's open meeting requirements. For information purposes, these meetings are not webcast and as such, do not meet the legislative requirements for the public and have been administratively suspended until further notice.

OPTIONS AND IMPACTS

Option 1 – Approve Amendments to Council Procedure Bylaw, Suspend holding Public Hearings and Request to Address Council sessions (**Recommended**)

Option 2 - Provide further direction to staff to comply with Health Officer's Order

Accessibility Impact Statement

The recommended approach addresses some accessibility issues in that audio and screen reading capabilities are maintained. As well the City uses a closed-captioning function on webcasts.

2015 – 2018 Strategic Plan

The recommended option has no Strategic Plan implications.

Impacts to Financial Plan

The recommended option has no financial implications.

Official Community Plan Consistency Statement

This issue has no specific Official Community Plan implications.

CONCLUSION

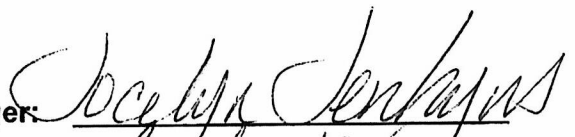
The Order from the Provincial Health Officer of March 16, 2020 has created the need for the City to analyse the potential implications resulting from the prohibition of gatherings more than 50 people. City Council and Committee of the Whole meetings, and in particular, public hearings create many occurrences throughout the year where well in excess of 50 people attend. In keeping with the Order, this report recommends changes to City Council meeting processes in the short term around public hearing and public participation at Council meetings, and by way of two amendments to the Council Procedures Bylaw to address more nimble meeting process alternatives.

Respectfully submitted,



Chris Coates
City Clerk

Report accepted and recommended by the City Manager:


Date: March 18, 2020

List of Attachments

Appendix A: Provincial Health Officer Order

Appendix B: Council Procedures Bylaw

Appendix C: Proposed Amendment to Council Procedures Bylaw