



## **Committee of the Whole Report**

### **For the Meeting of March 18, 2021**

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**To:** Committee of the Whole  
**From:** Chris Coates, City Clerk  
**Subject:** Electronic Participation Practices

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**Date:** March 5, 2021

#### **RECOMMENDATION**

That Council approve a Policy for the best practices for electronic participation practices for the duration of the Ministerial Order M192:

1. That council members participating remotely be visible to the Chair and City Clerk
2. That council members participating remotely also be made visible to other council members and the public when called on to vote or comment.
3. That all remote participants advise the Mayor and City Clerk upon arrival and departure during the course of the meeting to enable accurate record keeping and voting results.

#### **EXECUTIVE SUMMARY**

On February 11, 2021, Council directed staff to report back on the implications and ability to amend the Council Procedures Bylaw to require council members to be visible when participating remotely in order to be deemed present for the duration of Ministerial Order M192.

The technology to make visible and see council members who are participating remotely is already in use and is available at both the Council Chambers in City Hall and will also be available in the Capital Regional District board room while Council meetings occur from March until June this year.

A bylaw amendment to require the electronic participation practices described in the motion is contrary to Ministerial Order M192, attached as Appendix A, which states that a council member participating remotely by means of electronic or communication facilities is deemed present and that municipal procedure bylaws do not apply. Order M192 prevents municipalities from creating restrictions requiring the combination of audio and video technology to be considered present at a meeting. Therefore, a municipality cannot require a council member to participate visually while the Order is in effect. However, Order M192 also notes that local governments should use best efforts for the public to hear, or watch and hear, an open meeting. Should Council wish to implement a change like this on a permanent basis after the Ministerial Order is rescinded, a Council Procedures Bylaw amendment could be implemented to give effect to the requirements for a video feed for a council member to be considered present in a meeting however the Council direction was limited in scope to during the effective period of the Ministerial Order.

In view of this, and to strengthen Council's preferences, Council may wish adopt an Electronic Participation Practices Policy that covers the issues described in the February 11<sup>th</sup> motion.

An operational change aligns with the practice adopted in several comparable jurisdictions.

## **PURPOSE**

The purpose of this report is to report back on the implications and the ability to amend the Council Procedures Bylaw to implement remote participation rules.

## **BACKGROUND**

On February 11, 2021, Council passed the following motion:

*That Council direct staff to report back on the implications and ability to amend the Council Procedures Bylaw to require remote participation to occur so that Council members are visible to the Chair and the City Clerk in order to be recorded as present in a meeting, and visible to Council and the public via the webcast when called on to vote or comment, provided that the City's meeting management programs are operational to enable the video connection, for the duration of the Ministerial Order M192 and that Council, through the mayor, affirm each Council members' choice to participate remotely or in council chambers.*

Meetings currently use technology that enables visual and audio participation in the Council Chambers at City Hall. Meetings will take place in the Capital Regional District board room beginning on March 4 until approximately June 15 because the Council Chambers will be unable to be occupied while City Hall will be undergoing HVAC replacement/upgrades. The CRD board room can support the electronic participation practices described in the motion.

The Council Procedures Bylaw sets out the standard for electronic participation procedures which is audio. However, the Province of British Columbia issued Ministerial Order M192 on June 17, 2020, attached as Appendix A containing remote participation rules which apply despite the Community Charter section 128 and applicable requirements in a municipality's procedure bylaw. Under section 7(2) of Order M192, a member of a council or body who participates in a meeting by means of electronic or other communication facilities is deemed to be present.

Staff examined electronic participation practices adopted in response to the Covid-19 pandemic in Saanich, Coquitlam, New Westminster, and Vancouver. Those municipalities who use visual participation during meetings did this through operationalizing rather than through a bylaw amendment.

## **ISSUES AND ANALYSIS**

Order M192, section 7(2) is intended to accommodate remote participation by means of electronic or other communication facilities despite a Council Procedures Bylaw, and prevents municipalities from creating additional standards regarding which facilities are used and how they are used. Neither a bylaw change nor operational change would enable the City to require a council member to participate visually or be considered absent without video, at any time while Order M192 is in effect.

More generally a local government may implement electronic or communication facilities to use for its meetings. The City's Council Procedures Bylaw, establishes the current system for electronic participation by members of council. Appendix B attached, outlines the procedures for electronic participation including the pandemic related amendment which enhanced the remote participation opportunities. However, under Order M192, a council member is permitted to participate remotely by using another electronic or communication facility and be deemed present. Despite this inability to enforce electronic participation practices described in this motion, it is possible to adopt them on a voluntary basis, through a policy, or through a bylaw amendment.

Council may wish to consider whether a bylaw amendment, which is not enforceable, sets a public expectation that could be confusing compared to the establishment of a best practices policy. Order M192 also notes that local governments should use best efforts to the public to hear, or watch and hear, an open meeting which aligns with the use of video by remote participants which aligns with Council's motion.

Staff recommend using a Council Policy setting best practices for electronic participation during the Covid-19 pandemic to achieve the majority of the objectives described in the council motion for the duration of the Ministerial Order M192. Given Order M192, council members may choose to follow a electronic participation policy or not. This again would not have an impact as to whether a member is considered present at the meeting so long as the audio connection is maintained.

Since the February 11<sup>th</sup> Council direction, council members participating remotely have been utilizing video feeds on a regular basis. Council could also consider taking no further action in relation to this issue and rely solely on voluntary participation.

## **OPTIONS AND IMPACTS**

### **Option 1 – Approve an Electronic Participation Policy (*Recommended*)**

This option is to adopt electronic participation practices by resolution. Council members would follow these practices on a voluntary basis but not be required to follow them. Council members could not be deemed absent if there was no video participation. But the Policy would establish the following practices:

1. That council members participating remotely be visible to the Chair and City Clerk
2. That council members participating remotely also be made visible to other council members and the public when called on to vote or comment.
3. That all remote participants advise the Mayor and City Clerk upon arrival and departure during the course of the meeting to enable accurate record keeping and voting results.

### **Option 2 – Amend the Council Procedures Bylaw**

This option requires a bylaw amendment. Council Procedure Bylaw amendments require public notice under the Community Charter. Council members would follow these practices on a voluntary basis but not be required to follow them. Council members could choose to participate visually or not.

### **Option 3 – Receive the report for information and take no further action**

#### *2018 – 2022 Strategic Plan*

The recommended option does not have Strategic Plan implications.

#### *Impacts to Financial Plan*

The recommended option does not have Financial Plan implications as the technology exists to support the technological requirements described in the motion.

## **CONCLUSION**

The Province of BC continues to declare a provincial state of emergency related to the Covid-19 pandemic. Ministerial Order M192 enables council members to participate remotely and be deemed in attendance. Municipalities cannot require visual participation. Many municipal councils have operationalized audio and visual participation due to public interest. The recommendation would operationalize Council's direction and place a higher onus on council members to use video feeds when attending remotely. relating to audio-visual participation although it would not be enforceable.

Respectfully submitted,

Monika Fedyczkowska  
Legislative and Policy Analyst

Chris Coates  
City Clerk

**Report accepted and recommended by the City Manager.**

#### **List of Attachments**

Appendix A – Ministerial Order M192

Appendix B – Council Procedure Bylaw remote participation regulations

## **Appendix B to Electronic Participation Practices Report**

## March 18, 2020 Committee of the Whole

### Electronic participation by members

9. (1) For the purposes of this section, electronic participation in a meeting means participation by use of telephone communications or by Voice Over Internet Protocol (VOIP) that
    - a. enable the meeting's participants to hear and speak with each other, and
    - b. enable the public to hear the participation of Council members during that part of the meeting that is open to the public.
  - (2) Two members of Council may participate electronically in a Council meeting if:
    - a. At least 24 hours before the meeting those members notify the City Clerk of their intention to participate electronically, and
    - b. A majority of the members of Council are physically present at the meeting.
  - (3) If more than two members wish to participate electronically in a meeting, the two who may do so must be chosen by lot conducted by the City Clerk.
  - (4) Notwithstanding subsection (2) or (3), the Mayor may authorize more than two Council members to participate electronically provided that:
    - a. a state of local emergency has been declared in the City and in person participation in Council meeting would be inconsistent with the declaration; or
    - b. in the Mayor's opinion extra-ordinary circumstances exist that make it unsafe or impractical for Council members to physically participate in a meeting.
- and for clarity subsection (2)(b) does not apply to a meeting authorized pursuant to this subsection.
- (5) A meeting at which there is electronic participation must not include any of the following public hearings:
    - (a) hearings to which section 890 of the *Local Government Act* applies;
    - (b) hearings for heritage conservation matters under Part 27 of the *Local Government Act*.
  - (6) Written material at a meeting at which there is electronic participation, if that material is presented to the meeting without being included in either the agenda package or late agenda items sent to the members participating electronically, must be audibly read into the record.
  7. A member, who is participating electronically in the voting on a matter, must vote by audibly stating that they vote in favour or oppose.
  8. If there is an interruption in the communications' link to a member who is participating electronically, the other Council members may

- (a) decide on a short recess until it is determined whether or not the link can be re-established, or
- (b) continue the meeting and treat the interruption in the same manner as if a member who is physically present leaves the meeting room.