

Report to Council

Report Title: Municipal Emergency Act 2020 Review

Prepared By: Fiona Hamilton, Clerk

Department: Clerks

Date: April 7, 2020

Report Number: CLK2020-11 **File Number:** C11CL

Attachments: Redlined Procedural By-law

Recommendation:

That the Council of the Municipality of Brockton hereby receives Report Number CLK2020-11, Municipal Emergency Act 2020 Review, prepared by Fiona Hamilton, Clerk for information purposes and further approves a by-law coming forward to amend By-law 2018-092 Procedural By-law.

Report:

Background:

On March 17, 2020, the Province of Ontario declared an emergency due to the spread of the novel coronavirus, Covid-19. The Province of Ontario then made a number of Orders, including restricting gatherings of over five (5) people and closing all outdoor amenities.

On March 19, 2020, in response to concerns voiced by many municipalities, the Ontario Legislature enacted the Municipal Emergency Act, 2020, S.O. 2020, c. 4 (the "MEA"), which allows members of Council to participate electronically in meetings (open and closed session) and be counted towards quorum when an emergency affecting the municipality has been declared.

The MEA also allows Municipal Councils to hold an electronic meeting for the purpose of changing the Procedural By-law to allow for electronic participation., noting specifically that Councillors be counted towards quorum for that initial meeting.

On March 19, 2020, the Ontario Legislature also enacted O. Reg. 73/20: Order under subsection 7.1(2) of the *Emergency Management and Civil Protection Act* ("the EMCPA". The regulation suspends any limitation period for the duration of the emergency. Section 2 of the regulation states:

Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other

decision-maker responsible for the proceeding, be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020

Under section 7.1 of the EMCPA, these orders can only remain in effect for ninety (90) days, unless renewed by the Lieutenant Governor if the emergency continues.

Analysis:

MEA changes to the Procedural By-law

A redlined version of the Procedural By-law has been attached for Council's reference. The following is a list of the proposed changes:

- The definition of "Emergency" has been amended to reference the provisions of the EMPCA;
- Provisions have been changed to anticipate Emergency meetings occurring electronically;
- Provisions to align with the MEA and allow for electronic participation by both Council and staff;
- Provisions to provide guidance about dealing with connection problems, voting, and roll call to more accurately reflect the method of holding the meeting;
- Provisions to allow for delegations to participate in an electronic meeting, including provisions to deal with connection problems, etc.; and
- Provisions to allow for flexibility in arranging for electronic participation and the applying the Rules of Procedure as needed.

The proposed changes are suggested to provide guidance and consistency when holding electronic meetings.

Changes to the EMPCA

While the application of the rules introduced in the MEA are straightforward, the same cannot be said of the regulation made under the EMPCA.

The EMPCA states that the time by which any step must be taken in a proceeding in Ontario shall be suspended for the duration of the emergency (up to a maximum of 90 days, unless renewed), but there is no additional clarification about what is considered a "proceeding". Some examples of a proceeding may include, the consideration of planning applications, matters under the Drainage Act, the perfection of construction liens, reviews of permits made by Building Inspectors, etc. The EMPCA also suspended the limitation periods for all civil actions for at least 90 days as well.

The EMPCA also states that the application of these time periods are subject to the discretion of the court, tribunal, or decision-maker. As a result, in some circumstances, the decision-maker may decide to apply the usual time period, or potentially substitute a different time period that may seem fair in the circumstances.

The EMPCA poses some practical challenges for municipal Councils, as decision-makers for drainage matters and planning matters. The following are some practical examples of the types of questions that may arise:

- The Municipality of Brockton is usually required to holdback funds for any construction project until the time period when a construction lien could be filed. A lien could now potentially be filed 60 days

after the 90 days suspension, assuming the suspension is not renewed. Holding onto funds this long may create serious cash flow problems for contractors.

- The *Planning Act* contains a number of appeal periods for various planning decision, such as zoning by-laws, official plan reviews, etc. Building Permits are generally not issued until such time as all appeal rights have expired. One possibility would be to delay building permits until after the statutory time period comes back into effect, potentially in 90 days (and, in fact, the LPAT will not be considering matters until June as well). In this case, it is also possible that municipal Councils may be considered a “decision-maker” that could substitute a different time period that would be fair in the circumstances.
- There is a legislated time period by which a landowner can appeal to the Court of Revision or the Drainage Tribunal for matters related to municipal drains. Again, these matters could be delayed until after the 90 days suspension (if not renewed), or the Court of Revision could choose to substitute a different time period.

There is still considerable uncertainty about what is included in the term “proceeding”, what entities would be a “decision-maker”, and what types of circumstances should be taken into consideration when altering the time periods. We felt it was pertinent to ensure Council was aware of the concerns with this regulation and the uncertainty that makes it difficult for staff to proceed with certain tasks, such as releasing holdbacks, issuing building permits, or certifying that conditions have been met for planning matters.

The Bruce County planning staff have been consulted about these challenges but have not yet made any recommendations. It is anticipated that staff will bring forward additional reports if/when a situation arises involving the consideration of a particular time period so that Council can consider all the circumstances in the proper context.

Sustainability Checklist:

What aspect of the Brockton Sustainable Strategic Plan does the content/recommendations in this report help advance?

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| • Do the recommendations help move the Municipality closer to its Vision? | N/A |
| • Do the recommendations contribute to achieving Cultural Vibrancy? | N/A |
| • Do the recommendations contribute to achieving Economic Prosperity? | Yes |
| • Do the recommendations contribute to Environmental Integrity? | Yes |
| • Do the recommendations contribute to the Social Equity? | Yes |

Financial Impacts/Source of Funding:

- Do the recommendations represent a sound financial investment from a sustainability perspective? Yes

The monthly license fee for one host for the video-conference software is less than \$100.00 per month, whereas the Bruce County Council Chambers is usually \$200.00 per meeting. In addition, the proposed changes to the procedural by-law will allow the Council meetings to be livestreamed for greater transparency and accountability during a time of difficult decision-making.

Reviewed By:

A handwritten signature in black ink, appearing to be 'Trish Serratore', with a stylized, cursive script.

Trish Serratore, Chief Financial Officer

Respectfully Submitted by:

A handwritten signature in black ink, appearing to be 'Fiona Hamilton', with a simple, cursive script.

Fiona Hamilton, Clerk

Reviewed By:

A handwritten signature in black ink, appearing to be 'Sonya Watson', with a stylized, cursive script.

Sonya Watson, Chief Administrative Officer