



Administrative Report

Office of the Director of Council and Community Services/Clerk

To: Warden Tom Bain and Members of County Council

**From: Mary Birch
Director of Council and Community Services/Clerk**

Date: February 21, 2018

Subject: Bill 68 - Modernizing Ontario's Municipal Legislation Act, 2016

Report #: 2018-0221-CCS-R002-MB

Purpose

To provide County Council with information regarding the impact of Bill 68, Modernizing Ontario's Municipal Legislation Act, on governance procedures and policies of the County of Essex and to recommend amendments, where necessary.

Background

Bill 68 - Modernizing Ontario's Municipal Legislation Act, 2016 was introduced in the provincial legislature on November 16, 2016, and received Royal Assent on May 30, 2017. Although amendments to the Municipal Act are extensive, this report will concentrate on amendments that focus on:

- accountability and transparency;
- responsive and flexible local government.

The areas addressed by this Item are outlined in Table I below:

Table I - Municipal Act – Governance Amendments

Bill 68 Requirements	County of Essex Status
1. 223.2 Code of Conduct	Currently in place. Will review for changes prior to March 1, 2019.
2. 232.3 Integrity Commissioner	Current contract expires at the end of 2018. Joint procurement process with local municipalities has closed. Committee to review submissions has been formed.
3. 238(1) – Definition of a “Meeting” updated	Procedure by-law will require an amendment.
4. 238(3.1) – Electronic participation	Direction is required; further investigation and Procedure By-law will require an amendment if interest in exploring the new provision.
5. 239(2) – Updated closed meeting	Procedure by-law will require an amendment
6. 259(1.1) – Vacant seat	Procedure by-law will require an amendment
7. 268(1) – Temporary replacement	Procedure by-law will require an amendment
8. 270 (2.1) – Council-Staff Relations Policy	Incorporated in Code of Conduct – to be reviewed and amended prior to March 1, 2019

Discussion

Items 1 and 2 - Code of Conduct and Integrity Commissioner (IC)

Section 223.2 provides that Council *shall* establish codes of conduct; the County currently has an approved Council and Staff Code of Conduct. Bill 68 provides that a municipality *shall* make arrangements for all of the responsibilities set out in subsection 223.3 (1) to be provided by an Integrity Commissioner by March 1, 2019; prior to this date, an Integrity Commissioner has been optional. The County of Essex currently contracts the services of an Integrity Commissioner, however that contract expires in 2018. A joint RFP with some of the local municipalities has recently closed and submissions are being reviewed by a joint evaluation Committee. Administration will be providing a subsequent report recommending the appointment of an Integrity Commissioner and propose some amendments to the Council Code of Conduct.

3. Section 238(1) – Definition of a “Meeting”

Bill 68 updates the definition of a “meeting”; the comparison of the current definition from the Municipal Act and as proposed in Bill 68 is cited in Table II below.

Table II – Meeting Defined

Current Municipal Act	Bill 68 Definition
“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them.	“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where, a quorum of members is present, and members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Administration recommends that the County’s Procedure By-law be amended to explicitly mirror the language in Bill 68.

4. 238(3.1) – Electronic participation

Section 238 has been amended to provide that a member of council, local board, or a committee can *participate* electronically in a meeting which is open to the public, however shall not be counted in determining quorum.

Although the provision of the Act is optional, implementing electronic participation offers technical challenges to facilitate a two-way dialogue given the size of council and the layout of the Council Chamber, and the failure of the legislature to define what *electronic participation* means, such as email, video, text messages etc. Should Council want to enable this provision, a review of best practices will be undertaken to determine the most appropriate method to facilitate electronic participation, such as phone (audio), video, email, etc., and any appropriate limitations on electronic participation.

From a procedural perspective, the cited provision states that the member participating electronically does not form quorum, however, Bill 68 did not define “participation”, which results in uncertainty. Can the member participating electronically move or second motions, call a recorded vote, or when a matter is to be reconsidered, can the member participating electronically be deemed to have been absent and as not having voted - call for a reconsideration, notwithstanding that the member participated in the

original debate? Further, should members participating electronically be paid their per diem?

At this time, Administration does not recommend that County Council implement the use of electronic participation due to both technical and procedural complexities. The procedure by-law should be updated for greater certainty to reflect council’s decision in this regard.

5. 239(2) – Updated Closed Meeting Provisions

The Municipal Act permits Council to hold meetings that are closed to the Public that meet certain criteria, for which there were previously seven clauses, such as but not limited to litigation, labour, land acquisition and disposition and personal matters about identifiable individuals. Bill 68 adds four additional criteria that Council may choose as reasons for meeting in closed session.

239(2) – Updated Closed Meeting Provisions

- h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Administration recommends that the Procedure By-law be amended to permit the additional four (4) criteria under Section 239 (2) for which Council may move into a Closed Meeting.

6. 259(1.1) – Vacant seat (Parental Leave)

The amendment protects the seat of a member of council who is absent for 20 consecutive weeks or less if the absence is a result of the member’s pregnancy, the birth of the member’s child or the adoption of a child by the member.

Currently, section 259(1)(c) provides that if a member is absent for three-months without being authorized to do so by a resolution of council, their seat is declared vacant. The new provision permits members to be absent for parenting without having to seek Council’s approval.

Administration recommends that the Procedure By-law be amended to incorporate the new vacant seat provisions related to parenting.

7. 268(1) – Temporary replacement

Section 268(1) titled “temporary replacement” provides that the council of a local municipality **may** appoint **one** of its members as an alternate member of the upper-tier council, to act in place of a person who is a member of the council’s local municipality and its upper-tier municipality, when the person is unable to attend a meeting of the upper-tier council for any reason.

County Administration has met with the Clerks of the local municipalities and reviewed this provision of Bill 68. It was agreed that should a municipality want to utilize this alternate member provision, it would be beneficial for a similar process for appointment to be followed by each municipality. A template for an appointment by-law has been provided by the County Clerk.

As well, a draft County by-law setting out the roles and duties of an alternate member has been provided to the Clerks of the local municipalities for review and comment. A copy of the draft is attached as Appendix I. The by-law addresses such issues as:

- requirement for appointment by by-law at local municipality
- one alternate for entire term of Council (unless seat declared vacant)
- voting rights

- limitations – no replacement at Inaugural meeting, at Committee, Boards or Agencies
- not eligible for election to Warden or Deputy Warden’s positions
- compensation
- subject to Essex County policies, Code of Conduct, Integrity Commissioner

8. 270(2.1) – Council-Staff Relations Policy

Bill 68 has also added a new requirement under Section 270 (2.1) for the adoption of a policy regarding the relationship between members of council and the officers and employees of the municipality by March 1, 2019. The County of Essex Code of Conduct currently includes a section addressing Council-Staff relations, however, Administration would recommend reviewing that section and enhancing it into a separate policy.

Recommendation

That Essex County Council approve the recommendations outlined in Report 2018-R002-CCS-0221-MB resulting from Bill 68, Modernizing Ontario’s Municipal Legislation Act being:

- Review the need for amendments to Council Code of Conduct prior to March 1, 2019;
- Provide a subsequent report recommending the appointment of a new Integrity Commissioner, following the evaluation of proposals received for Integrity Commissioner services;
- Amend the County’s Procedure By-law to include the new definition of a “meeting”, as defined in Section 238 (1) of the Municipal Act, 2001, as amended;
- Continue to prohibit electronic meeting participation, pending further clarification of the definition of ‘participation’ and improvements to technology available;
- Develop Parental Leave Policy for members of County Council;
- Approve the proposed rules for temporary replacement members of County Council; and
- Develop Council-Staff Relations Policy prior to March 1, 2019.

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Respectfully Submitted

Mary Birch

Originally Signed by

Mary Birch Director of Council & Community Services/Clerk

Concurred With,

Robert Maisonville

Originally Signed by

Robert Maisonville, Chief Administrative Officer

Appendix No.	Title of Appendix
Appendix I	By-law to Establish Rules for Appointing Alternate to County Council