




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

INFORMATION REPORT

TO:	Chair and Members Committee of the Whole
COMMITTEE DATE:	May 20, 2020
SUBJECT/REPORT NO:	Status of Planning Meetings During the COVID-19 Pandemic Emergency (PED20108) (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

The purpose of this Information Report is to provide Council with an update on the status of statutory public meetings under the Planning Act and Ontario Heritage Act since the onset of the COVID-19 pandemic, and the various Provincial Orders that have limited opportunities for public gatherings.

BACKGROUND

Under the *Municipal Act, 2001*, any regular, special or other meeting of a council, of a local board or of a committee must be open to the public with certain limited exceptions. This provision applies to each of Hamilton's Planning Committee, Committee of Adjustment and Municipal Heritage Committee.

As part of its response to the Covid-19 Pandemic/Emergency (the "Emergency"), in addition to imposing physical distancing measures, the Province amended the *Municipal Act* to permit members of council, a local board and a committee, who are participating in meetings electronically, to be counted in determining quorum and to participate in a meeting closed to the public.

Hamilton's Procedural Bylaw was subsequently amended to permit the Mayor and Councillors to attend Council and committee meetings electronically. However, City Council has suspended the meetings of all standing committees until at least June 15, 2020 and is, in the interim, holding virtual or electronic meetings of the Committee of the Whole followed by a Council meeting.

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Statutory meetings and public hearings under the Planning Act and the Ontario Heritage Act in the City of Hamilton take place primarily through one of three committees: Planning Committee, Committee of Adjustment and Municipal Heritage Committee. No meetings of these committees have been held since the onset of the Emergency and the introduction of limitations on public gatherings and institution of physical distancing requirements. Therefore, while the City has continued to receive and process development applications, certain planning matters, such as Official Plan Amendments, Zoning By-law Amendments and Minor Variances have not been able to proceed to a final decision.

Provincial Orders continue to limit the ability to hold in-person committee meetings. To undertake virtual meetings of the Planning Committee, Committee of Adjustment and/or Municipal Heritage Committee would require the City to amend its procedural by-laws governing these committees.

HISTORICAL BACKGROUND

March 17, 2020—Province declares Covid-19 Pandemic Emergency (now extended until June 2, 2020) and subsequently issues a series of emergency orders including one which limits gatherings to 5 people (unless of the same household or attending a funeral which is limited to 10 people).

March 20, 2020—Council resolved to:

- a. postpone meetings of all standing committees and hold Committee of the Whole/Council meetings via teleconference until June;
- b. grant the City Clerk the authority to establish procedures and take all steps necessary to facilitate electronic participation by members of Council in Council and/or Committee meetings held in the Council Chamber;
- c. direct staff to install the necessary technology in the Council Chambers for members of Council to participate electronically at Council and/or Committee meetings held in the Council Chamber; and
- d. amend the Procedural By-law permitting '*electronic participation, in accordance with the Municipal Act, 2001 and/or any other applicable legislation...by members of Council at Council and/or Committee meetings during an emergency when attending in-person is not possible*'.

April 8, 2020—the City commenced holding Committee of the Whole/Council meetings via teleconference and Council enacted by-law revisions requiring every person to maintain a distance of at least two (2) metres from every other person and limiting social gatherings to five (5) people.

INFORMATION

Planning Committee

Among other responsibilities, the Planning Committee's mandate is to consider and make recommendations to Council on matters related to:

- the *Planning Act*, the *Ontario Heritage Act*, the *Municipal Act, 2001*, the *Condominium Act*, the *Niagara Escarpment Act* and other applicable legislation regarding planning, development engineering, by-law enforcement, licensing and downtown planning issues; and
- the *Ontario Building Code*, Zoning By-laws, the Property Standards By-laws, Licensing By-law, Animal Control By-law, Sign By-law and other relevant By-laws.

The *Planning Act* requires that Statutory Public Meetings be held in certain circumstances (e.g. applications to amend the official plan or zoning bylaw or approve plans of subdivision) which meetings are held by Planning Committee. Public notice of these Meetings is provided by:

- a. requiring, approximately one month before the Meeting, the installation of a public notice sign on-site, after an application has been deemed complete, which will stipulate the date/time of the Meeting; and
- b. mailing, no later than 17 days prior to the Meeting, written notice of the Meeting to all property owners within 120 metres of the subject lands and those who wrote in requesting to be notified of the Meeting.

The numerous references in the *Planning Act* to 'public meetings' (58) and to 'oral submissions' (35) underline the City's obligation to facilitate public participation and input at these Meetings. The challenge presented by the Emergency, and particularly the physical distancing consequences, is whether municipalities can continue to meet these obligations in a roughly equivalent and meaningful way.

Committee of Adjustment

The Committee of Adjustment ("C of A") is a committee established by Council by-law pursuant to the *Planning Act* which deals with applications for minor variances to zoning by-laws and consents (i.e. property severances).

The *Planning Act* requires that each application be heard within 30 days of receipt, that each such hearing shall be in public "*and the committee shall hear the applicant and*

every other person who desires to be heard in favour of or against the application, and the committee may adjourn the hearing or reserve its decision” [s.45(4)(6) PA].

Generally speaking, the conduct of C of A hearings is governed by the *Statutory Powers Procedures Act* which [s.5.2 SPPA] permits the holding of ‘*electronic hearings*’ if the *tribunal has made rules to hold an electronic hearing*.

Municipal Heritage Committee

The Municipal Heritage Committee (“MHC”) is an advisory standing committee which is appointed by, and is responsible/accountable to, Council. It helps Council make decisions on matters related to the designation and conservation of property of cultural heritage value or interest, including individual properties and heritage conservation districts.

Under the *Ontario Heritage Act*, Council is not required to establish an MHC, but once it does, Council is required to consult with the MHC:

- before giving its intention to designate a property [s.29(2) OHA];
- on applications to alter designated properties where the alteration is likely to affect the property's heritage attributes as set out in the by-law designating the property [s.33(4)];
- on applications to demolish or remove any building or structure on designated property [s.34(2)];
- before considering an application from an owner of designated property, to repeal the by-law or part thereof designating the property [s.31(2)];
- before passing by-laws providing for the entering into of easements or covenants with owners of real property, or interests therein, for the conservation of buildings of cultural heritage value or interest [s.37(1)]; and
- before passing a by-law to define one or more areas as an area to be examined for future designation as a heritage conservation district [s.40(3)].

Provincial Changes to the Planning Act

Effective April 15, 2020, the Province issued comprehensive new legislation affecting timelines under the *Planning Act* that allows a municipality to continue processing development applications, notices of decision to be issued and appeals to be filed. This new legislation also allows a municipality to pause the processing of a development application, including where a notice of decision has already been issued, by requiring the reissuance of a notice of decision or extending the deadline for issuance of a notice of decision which, in turn, extends the deadline for filing an appeal of that decision. The new rules also state that any time during the Emergency does not count towards non-decision appeal timelines in the *Planning Act*, which may pause some non-decision appeals.

To summarize, after April 15, 2020:

- a municipal authority can make decisions and issue notices on *Planning Act* matters during the Emergency;
- but, if a municipal authority is unable or unwilling to make a decision on a *Planning Act* matter during the Emergency, it need not do so until after the Emergency is over. No appeal rights from a non-decision will accrue; and
- any decision made during the Emergency is subject to the usual notice requirements and will create rights of appeal, but the municipal authority is not obligated to forward the appeal record to the LPAT until the Emergency is over.

Provincial representatives advised that the primary reason for these changes was to permit municipalities to assess whether they can adequately process planning applications and hold statutory public meetings while adhering to Emergency orders and public health advice including physical distancing requirements.

However, the Province also noted, without providing any further tools or clarifying legislation, that municipalities '*can consider how to meet the Planning Act's requirements using electronic and virtual channels to engage and solicit feedback from the public on land use planning matters while maintaining physical distancing*'.