

**Item 4.2****Extension of Temporary Procedures for Attendance by Councillors at Meetings by Audio-Visual Link and Post-Election Arrangements****File No: S051923-02****Memorandum by the Chief Executive Officer**

To Council:

On 17 May 2021, Council approved Temporary Procedures for Attendance by Councillors at Meetings by Audio-Visual Link - Covid-19 Pandemic (Temporary Procedures) to 31 December 2021, following amendments to the then Local Government (General) Regulation 2005 to temporarily exempt councils from complying with the requirement under codes of meeting practice for councillors to be personally present at meetings in order to participate in them. The exemption has recently been extended and now expires on 30 June 2022.

The Temporary Procedures enable the Lord Mayor to determine requests for attendance at meetings by councillors by audio visual link and to determine that all councillors may attend meetings remotely in circumstances of increased public health risks relating to Covid-19 cases in the Sydney area.

On 29 October 2021, the Office of Local Government released circular 21-35 "2021 Model Code of Meeting Practice for Local Councils in NSW" advising that the new Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code) has been finalised. The Model Meeting Code contains new non-mandatory provisions that allow councils to permit individual councillors to attend meetings by audio-visual link and to hold meetings by audio-visual link in the event of natural disasters or public health emergencies.

Councils must adopt a Code of Meeting Practice within 12 months of the local government elections. An updated Code of Meeting Practice will be prepared for Council consideration in early 2022 to meet this requirement. This will include provisions relating to attendance via audio-visual link.

The repeal date for section 237 of the Local Government (General) Regulation 2021, which exempts councils from the requirement for councillors to be personally present at meetings in order to participate, has been extended to 30 June 2022. The new Model Meeting Code has been published in the Government Gazette and prescribed by the Local Government (General) Regulation 2021.

In order to provide flexibility, particularly in the post-election recess period (subject to swearing in of Councillors), extending the Temporary Procedures will enable remote meetings to be held over the recess period and to 30 June 2022 if required, while a new Code of Meeting Practice is considered, exhibited and adopted. It is anticipated that Council will resume in-person meetings in 2022, subject to any public health requirements.

It is recommended that minor amendments are made to the Temporary Procedures to also enable attendance at meetings by audio visual link to due to a natural disaster event such as bushfires or flooding and to enable a determination that all councillors attend a meeting using audio visual links in the event of a natural disaster impacting the Sydney area. This is in accordance with the provisions of the new Model Meeting Code.

This memorandum recommends that Council approve the extension of, and minor amendments to, the Temporary Procedures for Attendance by Councillors at Meetings by Audio-Visual Link and delegate authority to the Lord Mayor to determine requests for attendance at meetings by councillors by audio visual link and to determine that all councillors may attend meetings remotely in circumstances of increased public health risks relating to Covid-19 cases in the Sydney area or in the event of a natural disaster impacting the Sydney area.

### **Post 2021 Election Arrangements**

On 24 July 2021, the Minister for Local Government announced that the September 2021 local government elections would be postponed to address the risks posed by the Delta outbreak of Covid-19 in Greater Sydney. A new date for the local government elections has been set for Saturday 4 December 2021.

The NSW Electoral Commission and the Office of Local Government have advised that the declaration of election results will not occur before 21 December 2021 and will most likely occur between 21 and 23 December 2021.

Section 233A of the Local Government Act 1993 requires that a councillor must take an oath of office or make an affirmation oath in person before the Chief Executive Officer, an Australian legal practitioner or a justice of the peace. If taken outside of a meeting, the oath must be “publicly recorded”.

A councillor is able to exercise their functions once a poll is declared, but is not able to attend Council meetings until they take their oath or affirmation.

The City of Sydney post-election extraordinary meeting of Council is currently scheduled to be held in-person on 23 December 2021, subject to the declaration of election results.

### **Recommendation**

It is resolved that:

- (A) Council note circular 21-35 2021 Model Code of Meeting Practice for Local Councils in NSW as shown at Attachment A to the subject memorandum;
- (B) Council approve the extension of and amendments to the Temporary Procedures for Attendance by Councillors at Meetings by Audio-Visual Link as shown at Attachment B to the subject memorandum, to 30 June 2022 or the adoption of a new Code of Meeting Practice (whichever is sooner);

- (C) authority be delegated to the Lord Mayor to determine requests for attendance at meetings by councillors by audio visual link and to determine that all councillors may attend meetings remotely in circumstances of increased public health risks relating to Covid-19 cases in the Sydney area or in the event of a natural disaster impacting the Sydney area ; and
- (D) Council note that an updated Code of Meeting Practice, incorporating the mandatory provisions of the Model Meeting Code will be considered early in 2022.

**MONICA BARONE**

Chief Executive Officer

**Attachments**

- Attachment A.** Circular 21-35 2021 Model Code of Meeting Practice for Local Councils in NSW
- Attachment B.** Temporary Procedures for Attendance by Councillors at Meetings by Audio-Visual Link

# **Attachment A**

**Circular 21-35 2021 Model Code of Meeting  
Practice for Local Councils in NSW**



<b>Circular Details</b>	21-35 / 29 October 2021 / A796782
<b>Previous Circular</b>	21-02 <i>Temporary exemption from the requirement for councillors to attend meetings in person</i>
<b>Who should read this</b>	Mayors / Councillors / General Managers / Joint Organisation Executive Officers / Council governance staff
<b>Contact</b>	Council Governance Team / 02 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	Council to Implement

## 2021 Model Code of Meeting Practice for Local Councils in NSW

### What's new or changing

- Following extensive consultation, the new *Model Code of Meeting Practice for Local Councils in NSW* (Model Meeting Code) has been finalised.
- The new Model Meeting Code has been published in the Government Gazette and is expected to be prescribed under the *Local Government (General) Regulation 2021* (the Regulation) on or before **Friday 19 November 2021**. The new Model Meeting Code is available on the Office of Local Government's (OLG) website [here](#).
- The new Model Meeting Code contains new provisions that allow councils to permit individual councillors to attend meetings by audio-visual link and to hold meetings by audio-visual link in the event of natural disasters or public health emergencies. The provisions governing attendance at meetings by audio-visual link are non-mandatory. Councils can choose not to adopt them or to adapt them to meet their own needs.
- Amendments have also been made to the provisions governing the webcasting of meetings and disorder at meetings to reflect amendments to the Regulation since the previous iteration of the Model Meeting Code was prescribed.
- An amendment has also been made to the Model Meeting Code implementing recommendation 6 in ICAC's report in relation to its investigation of the former Canterbury City Council (Operation Dasha). ICAC recommended that the Model Meeting Code be amended to require that council business papers include a reminder to councillors of their oath or affirmation of office, and their conflict of interest disclosure obligations.
- A Word version of the new Model Meeting Code is available on OLG's website showing the amendments in track changes.
- The repeal date for section 237 of the Regulation which exempts councils from the requirement under clause 5.2 of the previous iteration of the Model Meeting Code for councillors to be personally present at meetings in order to participate in them has been extended to **30 June 2022**. This is to allow councils additional time to exhibit and adopt new codes of meeting practice containing provisions allowing attendance by audio-visual link at meetings. If councils have not adopted a new meeting code that allows councillors to attend meetings by audio-visual link, they will not be permitted to do so after that date.

## What this will mean for your council

- Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code within 12 months of the local government elections. A council's adopted meeting code must not contain provisions that are inconsistent with the mandatory provisions.
- A council's adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code and any other supplementary provisions adopted by the council.
- Councils and committees of councils of which all the members are councillors must conduct their meetings in accordance with the code of meeting practice adopted by the council.
- Under section 361 of the *Local Government Act 1993*, before adopting a new code of meeting practice, councils must first exhibit a draft of the code of meeting practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft code. This requirement does not apply to joint organisations.

## Key points

- The Model Meeting Code has two elements:
  - mandatory provisions (indicated in black font)
  - non-mandatory provisions (indicated in red font) covering areas of meeting practice that are common to most councils but where there may be a need for some variation in practice between councils based on local circumstances. The non-mandatory provisions also operate to set a benchmark based on what OLG sees as best practice for the relevant area of practice.
- The Model Meeting Code also applies to meetings of the boards of joint organisations and county councils. The provisions that are specific to meetings of boards of joint organisations are indicated in blue font.
- In adopting the Model Meeting Code, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".
- In adopting the Model Meeting Code, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".

## Where to go for further information

- The new Model Meeting Code is available on OLG's website [here](#).
- For more information, contact the Council Governance Team by telephone on 02 4428 4100 or by email at [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).



**William Power**

**Acting Coordinator General, Planning Delivery and Local Government**

## **Attachment B**

**Temporary Procedures for Attendance by  
Councillors at Meetings by Audio Visual  
Link**

## Temporary Procedures for Attendance by Councillors at Meetings by Audio-Visual Link

*These temporary procedures are supplementary to the City of Sydney Code of Meeting Practice and expire on 30 June 2022 unless revoked earlier.*

*For the purposes of these procedures, an audio-visual link is a facility that enables audio and visual communication between persons at different places.*

*The temporary procedures will apply only to councillors who are unable to physically attend committee and council meetings due to **natural disasters, such as bushfires and floods** and matters relating to Covid-19, such as where a councillor has been requested to self-isolate by NSW Health, where a councillor has been unavoidably detained in another state or country due to border closures or where there is an outbreak impacting the Sydney area such that increased health concerns give rise to a need for any or all councillors to attend the meeting remotely.*

### Approval for councillors to attend meetings by audio visual link

1. The Lord Mayor may, in response to a request made by a councillor, permit the councillor to attend one or more meetings of the council or committee remotely by audio visual link where they are satisfied that the councillor will be prevented from attending the meeting/s in person due to matters relating to Covid-19 **or a natural disaster**.
2. Requests by councillors to attend meetings remotely by audio-visual link must be made in writing to the Chief Executive Officer by 12 noon on the day of the relevant meeting/s wherever possible and must provide information about the meeting/s the councillor will be prevented from attending in person and the reason why the councillor will be prevented from attending the meeting/s in person. When circumstances arise after 12 noon that would prevent a councillor from attending in person all attempts will be made to facilitate remote attendance if possible, subject to technical capacity to do so.
3. The Chief Executive Officer will advise the Lord Mayor of any requests by councillors to attend meetings remotely by audio-visual link and request that a determination be made.
4. The determination permitting a councillor to attend one or more meetings by audio-visual link must provide the following information:
  - (a) the Lord Mayor's confirmation that she is satisfied that the request is made on valid grounds related to Covid-19 **or a natural disaster**, and
  - (b) details of the meetings the determination applies to.
5. The Lord Mayor may decide, where a request has been granted for remote attendance by one councillor, that it is appropriate for all councillors to attend remotely. This advice should be provided to all councillors as soon as possible on the day of the relevant meeting.
6. A determination in relation to an application to permit a councillor to attend a meeting remotely by audio-visual link is at the discretion of the Lord Mayor.

7. The Lord Mayor is under no obligation to permit a councillor to attend a meeting remotely by audio-visual link where the technical capacity does not exist to allow the councillor to attend a meeting by these means.
8. The Lord Mayor is to advise the council or committees of the council comprising wholly of councillors of all applications and determinations made in relation to those applications at the outset of the relevant meeting.

#### **Attendance by councillors at meetings by audio visual link**

9. Where a councillor attends a meeting by audio-visual link with the approval of the Lord Mayor they are to be taken as attending the meeting in person for the purposes of the City of Sydney code of meeting practice and will have the same voting rights as if they were attending the meeting in person.
10. The City of Sydney code of meeting practice will apply to a councillor attending a meeting remotely by audio-visual link, in the same way it would if the councillor was attending the meeting in person.
11. Councillors must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link.
12. Councillors must be appropriately dressed when attending meetings by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.
13. Where a councillor attends a meeting of the council or a committee of the council by audio-visual link, the minutes of the meeting must record that they attended the meeting by audio-visual link.

#### **Requirement for all councillors to attend a meeting using audio visual links due to Covid-19 or a natural disaster**

14. The Lord Mayor may, in response to a heightened public health risk situation involving Covid-19 cases impacting the Sydney area **or in the event of a natural disaster impacting the Sydney area**, determine that increased health **or safety** concerns give rise to a need for all councillors to attend the meeting remotely. In such situations the Lord Mayor will advise that the meeting will be held entirely remotely using audio visual links.
15. The Lord Mayor will advise councillors of the determination to hold a meeting entirely remotely using audio visual links as soon as practicable prior to the relevant meeting. It is noted that under section 10 of the Local Government Act 1993 members of the public are entitled to attend such a meeting in person and facilities to do so will be provided, subject to compliance with any applicable public health orders.
16. Should the Lord Mayor determine that all councillors are permitted to attend the meeting entirely remotely, relevant City staff will also be permitted by the Chief Executive Officer to attend the meeting remotely.
17. Should the Lord Mayor determine that all councillors are permitted to attend committee meetings entirely remotely, members of the public will be permitted to address the meeting remotely, including from the public meeting if they have attended in person.

### **Conflicts of interest**

18. Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the City of Sydney code of conduct.
19. Where a councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting must be terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.

### **Confidentiality**

20. Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting has been closed to the public under section 10A of the Local Government Act 1993.

### **Maintenance of order**

21. Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the councillor's audio link to the meeting for the purposes of enforcing compliance with the council's code of meeting practice.
22. If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the councillor's audio-visual link to the meeting.