

City of Mississauga Corporate Report



Date: November 4, 2020

To: Chair and Members of Governance Committee

From: Gary Kent, CPA, CGA, ICD.D, Commissioner of
Corporate Services and Chief Financial Officer

Originator's files:

Meeting date:
November 16, 2020

Subject

Proxy Voting at Council Meetings

Recommendation

That the Governance Committee provide direction on proxy voting at Council meetings as outlined in the report dated November 4, 2020 from the Commissioner of Corporate Services and Chief Financial Officer and Treasurer .

Background

Bill 197, *the COVID-19 Economic Recovery Act*, 2020 introduced amendments to various Provincial Legislations, including the *Municipal Act, 2001* ("The Act"). Among the amendments, municipal councils were given the authority to amend Procedure By-laws to permit Members of Council to appoint a proxy. On September 28, 2020, Governance Committee considered the *Proxy Voting at Council Meetings* report (Appendix 1) and directed staff to report back on guidelines for proxy voting at Council meetings.

The Municipal Act, 2001, sets out limits to the proxy appointment process for members of Council:

1. A member shall not appoint a proxy unless the proxyholder is a member of the same council as the appointing member.
2. A member shall not act as a proxy for more than one member of council at any one time.
3. The member appointing the proxy shall notify the clerk of the appointment in accordance with the process established by the Clerk
4. For the purpose of determining whether or not a quorum of members is present at any point in time, a proxyholder shall be counted as one member and shall not be counted as both appointing member and the proxyholder.
5. A proxy shall be revoked if the appointing member or the proxyholder requests that the proxy be revoked and complies with the proxy revocation process established by the Clerk.

6. Where a recorded vote is requested, under section 246, the Clerk shall record the name of each proxyholder, the name of the member of Council for whom the proxyholder is voting and the vote cast on behalf of that member.
7. A member who appoints a proxy for a meeting shall be considered absent from the meeting for purposes of determining whether the office of the member is vacant under clause 259(1)(c).

Comments

The Act provides flexibility to municipalities to establish a process on establishing and revoking proxies, how proxies can be used during a meeting (i.e. voting, speaking and asking questions) and when to use or not use a proxy. In situations, where a member has a pecuniary interest in a matter under the *Municipal Conflict of Interest Act*, a member cannot appoint a proxy or serve as a proxy holder.

The following is a suggested process for appointing and revoking proxy votes

Process to Appoint a Proxy Vote

Subject to the limitations in the *Municipal Act* and the *Municipal Conflict of Interest Act*:

1. A member of Council may appoint a proxy vote to one member of Council in the event of an absence at a Council meeting for any reason. The proxy holder may speak, vote or ask questions on behalf of the appointing member.
2. The appointing member shall notify the Clerk and/or designate in writing at least 24 hours before the scheduled commencement of a Council meeting. The notice shall include the name of the proxyholder and the Council meeting date the appointment is for.
3. The Clerk and/or designate shall notify members of Council of the appointment prior to the scheduled commencement of the Council meeting.
4. At the commencement of the meeting, the Mayor/Acting Mayor shall advise of the proxy appointment(s).
5. When voting, the proxy holder shall first indicate their vote (electronically or by raising their hand) and then provide a verbal vote as a proxyholder.

Process to Revoke a Proxy Vote

1. If the member of Council who was to be absent and after notification of the proxy vote appointment has been provided in writing:
 - a) Attends the Council meeting before the start of the meeting, the proxyholder shall immediately withdraw from voting on behalf of the appointing member.
 - b) Attends the Council meeting after the start of the meeting, shall state for the record that the proxy vote is revoked. The proxyholder shall immediately withdraw from voting on behalf of the appointing member.

Financial Impact

N/A

Conclusion

Proxy Voting allows members of Council to participate when absent at a meeting, subject to the limitations set out in the Act and the Municipal Conflict of Interest Act. To implement proxy voting an amendment to the Procedure By-law 139-13 is required that sets out the process outlined in this report to appoint and revoke proxies.

Attachments

Appendix 1 Proxy Voting at Council Meetings Report (Bill 197 and the Resumption of Council and Committee Meetings) dated July 24, 2020.



Gary Kent, CPA, CGA, ICD.D, Commissioner of Corporate Services and Chief Financial Officer

Prepared by: Sacha Smith, Manager of Legislative Services and Deputy Clerk

City of Mississauga Corporate Report



<p>Date: July 24, 2020</p> <p>To: Mayor and Members of Council</p> <p>From: Gary Kent, CPA, CGA, ICD.D, Commissioner of Corporate Services and Chief Financial Officer</p>	<p>Originator's files:</p> <hr/> <p>Meeting date: August 5, 2020</p>
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Subject

Bill 197 and the Resumption of Council and Committee Meetings

Recommendation

1. That the report from the Commissioner of Corporate Services dated July 24, 2020 entitled "Bill 197 and the Resumption of Council and Committee Meetings" be received.
2. That Council and Committee meetings resume with their regular schedule effective September 8, 2020.
3. That the Council Procedure By-law 193-2013 be amended to allow for electronic participation at all Council and Committee meetings until August 1st 2021.
4. That the Committee of Adjustment Procedure By-law 0350-2007 be amended to allow for electronic participation until August 1st 2021.
5. That the Rules of Practice and Procedure for Property Standards and Mississauga Appeal Tribunal be amended to allow for electronic participation until August 1st 2021.
6. That prior to the August 1st 2021 expiry date of the extension of electronic participation at Council and Committee meetings, that staff report back to Governance Committee on the option of continuing with the provision of electronic participation at Council and/or Committee meetings and Quasi-Judicial Hearings.
7. That Council provide direction related to implementing proxy voting for Council meetings.

Report Highlights

- Bill 197 has introduced legislation that would allow Council to amend their Procedure By-law to allow for electronic participation in Council, local boards and committee meetings on a permanent basis.
- Bill 197 also introduces the option of allowing proxy voting during Council meetings.
- Electronic participation at Council and Committee meetings during the post-COVID transition period provides flexibility in the resumption of Council, Standing and Advisory Committee meetings and the Committee of Adjustment.
- By extending the electronic participation provisions in the Procedure By-laws until August 1, 2021, it allows Council and staff to review the desire and appropriateness of making these provisions permanent.

Background

The *Municipal Emergency Act, 2020*, allowed municipalities to allow for electronic participation in open and closed meetings and for those participating electronically to be counted for purposes of quorum. Council adopted By-law 50-2020, which amended the Council Procedure By-law to implement these changes during a declared emergency for Council and its Standing Committees (Audit, Budget, General Committee and Planning and Development Committee).

Since the declaration of the Provincial Emergency, all meetings have been held virtually, including Council, which has met on a weekly basis, Audit and Budget Committees. Planning and Development Committee and the Committee of Adjustment have resumed with virtual participation of Committee members, applicants and the public. All other Committees and Quasi-judicial tribunals were cancelled during this period.

Bill 197, *the COVID-19 Economic Recovery Act, 2020*, which received Royal Assent on July 21, 2020, amends among other Acts, the Municipal Act, 2001 by allowing municipal councils, committees and boards to determine whether they choose to amend their procedure bylaws to:

- allow the use of electronic participation at meetings on a permanent basis;
- state whether members can participate electronically in both open meeting and closed meetings;
- state whether members participating electronically count towards quorum;
- allow the use of proxy voting

Appendix 1 and 2 are the Ministry of Municipal Affairs and Housing Information Guides related to the legislative changes.

Comments

Resumption of Council and Committees and Electronic Participation

As we move towards recovery, the resumption of the regularly scheduled Council, Standing and Advisory Committees and Quasi-Judicial Tribunals is appropriate.

Bill 197, *the COVID-19 Economic Recovery Act*, 2020, amends the Municipal Act, 2001 to allow municipalities to amend their procedure by-laws to allow for electronic participation in open and closed meetings and allows those members of Council participating electronically be counted towards quorum outside of an emergency declaration period. Currently, the Procedure By-law 139-2013 only permits electronic participation during a declared emergency period; however it is recommended that the Procedure By-law be amended to allow for an extension of this provision until August 1, 2021 to provide greater flexibility during this transition period. Staff should report back prior to the extension period expires to determine whether to allow electronic participation a permanent provision in the By-law and where it should be subject to certain conditions such as medical leave, parental leave or business travel purposes. The flexibility of electronic participation allows for the resumption of Council and all committee meetings as originally scheduled from September 8th onward.

Council, General Committee, Budget, Audit, Planning and Development Committee and the Committee of Adjustment meetings are held in the Council Chambers. The Chambers are being modified to address physical distancing requirements, including the installation of plexi-glass dividers, seating decals and directional signage. The Chambers will be ready for in-person meetings effective September 8th, 2020 subject to delivery of materials. Should Council support the continuation of electronic participation in meetings, a member could chose to participate in these meetings electronically, a hybrid model could be used to allow for in-person and electronic participation in the meeting. Given the physical distancing requirements, the capacity of the Chambers is significantly reduced; however overflow for the public could be accommodated in the Great Hall. It is also recommended that the Committee of Adjustment Procedure By-law 350-2007 be amended to allow for an electronic or hybrid model. Electronic or hybrid meetings require additional staff resources and are more costly to run.

Legislative Services staff will work with committee members of all the advisory and quasi-judicial committees on a resumption plan. Most advisory committees meet in various committee rooms in the Civic Centre, given the need for physical distancing and space constraints of the meeting rooms, it may be difficult to accommodate the advisory committees. It is most appropriate to meet electronically for the foreseeable future. Over the past few months, it has been demonstrated that electronic meetings can be effective and have allowed for participation by all interested parties.

It is recommended that the current electronic meeting provisions be extended until August 1, 2021. This would give Council and Committees more experience with these types of meetings to determine whether this should be allowable on a permanent basis. Staff would report to Governance Committee prior to July 2021.

Proxy Voting

The COVID-19 Economic Recovery Act, 2002 amendments to the Municipal Act, 2001, allows a member of Council to appoint another member of Council as a proxy to act in their place when they are absent subject to certain rules:

1. A member shall not appoint a proxy unless the proxyholder is a member of the same council as the appointing member.
2. A member shall not act as a proxy for more than one member of council at any one time.
3. The member appointing the proxy shall notify the clerk of the appointment in accordance with the process established by the Clerk
4. For the purpose of determining whether or not a quorum of members is present at any point in time, a proxyholder shall be counted as one member and shall not be counted as both appointing member and the proxyholder
5. A proxy shall be revoked if the appointing member or the proxyholder requests that the proxy be revoked and complies with the proxy revocation process established by the Clerk
6. Where a recorded vote is requested, under section 246, the Clerk shall record the name of each proxyholder, the name of the member of Council for whom the proxyholder is voting and the vote cast on behalf of that member
7. A member who appoints a proxy for a meeting shall be considered absent from the meeting for purposes of determining whether the office of the member is vacant under clause 259(1)(c).

Proxy voting allows Members of Council the ability to participate in votes when absent from meetings subject to the provisions of Municipal Act. Should Council wish to investigate proxy voting for Council meeting purposes, staff should be requested to report back to Governance Committee in the fall on options for proxy voting such as general or specific proxies, rules and processes for its implementation.

Financial Impact

N/A

Conclusion

The ability for Council and Committee members to participate in meetings electronically and be counted towards quorum will ensure the continuity and/or resumption of meetings and the business of the City. This will allow for greater flexibility for advisory committees where physical distancing may not be feasible. By extending the electronic provisions in the Council and Committee and Committee of Adjustment Procedure By-laws flexibility is granted through the post COVID transition period and allows a review of the appropriateness and conditions by which this provision could be used on a more permanent basis.

The ability to have a proxy vote when unable to attend a meeting allows Council members to participate in votes however requires further review to determine the appropriate processes and implementation options.

Attachments

Appendix 1 - Information Sheet Electronic Participation in Municipal Meetings

Appendix 2 - Information Sheet Proxy Voting for Municipal Council Members



A handwritten signature in black ink that reads "G. Kent." with a period at the end. The signature is written in a cursive, flowing style.

Gary Kent, CPA, CGA, ICD.D, Commissioner of Corporate Services and Chief Financial Officer

Prepared by: Diana Rusnov, Director, Legislative Services & City Clerk

Electronic Participation in Municipal Meetings

July 2020

This document is intended to give a summary of complex matters. It does not include all details and does not take into account local facts and circumstances. This document refers to or reflects laws and practices that are subject to change. Municipalities are responsible for making local decisions that are in compliance with the law such as applicable statutes and regulations. This document applies only to those municipalities whose meeting rules are governed by the Municipal Act, 2001.

This document replaces previous guidance released in March 2020 regarding electronic participation in municipal meetings during emergencies.

This document, as well as any links or information from other sources referred to in it, should not be relied upon, including as a substitute for specialized legal or other professional advice in connection with any particular matter. The user is solely responsible for any use or application of this document.

Overview

The province has made changes to the *Municipal Act* to allow members of councils, committees and certain local boards who participate in open and closed meetings electronically to be counted for purposes of quorum (the minimum number of members needed to conduct business at a meeting).

These provisions are optional. Municipalities continue to have the flexibility to determine if they wish to use these provisions and incorporate them in their individual procedure bylaws.

Municipalities may wish to review their procedure bylaws to determine whether to allow members to participate in meetings electronically, and whether to take advantage of the new provisions based on their local needs and circumstances.

What a municipality can do

A municipality can choose to hold a special meeting to amend their procedure bylaw to allow electronic participation. During this special meeting, members participating electronically can be counted for the purposes of quorum.

Municipal councils, committees and boards can choose to amend their procedure bylaws to:

- allow the use of electronic participation at meetings
- state whether members can participate in both open meeting and closed meetings
- state whether members participating electronically count towards quorum

It is up to municipalities to determine:

- whether to use these provisions
- the method of electronic participation
- the extent to which members can participate electronically (for example, it is up to municipalities to decide whether all council members participate electronically or whether some still participate when physically present in council chambers)

Technology to use for electronic meetings

Municipalities, their boards and committees can choose the technology best suited to their local circumstances so:

- their members can participate electronically in decision-making
- meetings can be open and accessible to the public

Municipalities may want to engage with peers who have electronic participation in place to find out about best practices as they revise their procedure bylaws. Some municipalities may choose to use teleconferences while others may use video conferencing.

Open meeting requirements

If a municipality chooses to amend their procedure bylaw to allow people to participate electronically, meetings would still be required to follow existing meeting rules, including that the municipality:

- provides notice of meetings to the public
- maintains meeting minutes
- continues to hold meetings open to the public ([subject to certain exceptions](#))

The *Municipal Act* [specifies requirements for open meetings](#) to ensure that municipal business is conducted transparently, and with access for and in view of the public. There are limited circumstances under the *Municipal Act* when municipal meetings can be conducted in closed session.

Rules for local boards

Local boards subject to the meeting rules in the *Municipal Act* include:

- municipal service boards
- transportation commissions
- boards of health
- planning boards
- many other local boards and bodies

Some local boards may not be covered. For example, police services, library and school boards have different rules about their meetings, which are found in other legislation.

Municipalities are best positioned to determine whether a local entity is considered a local board. If in doubt whether a local entity is covered under these rules, municipalities can seek independent legal advice regarding the status of local entities and whether these new provisions would apply to them.

Contact

If you have questions regarding how these new provisions might impact your municipality, contact your [local Municipal Services Office](#).

- **Central Municipal Services Office**
Telephone: 416-585-6226 or 1-800-668-0230
- **Eastern Municipal Services Office**
Telephone: 613-545-2100 or 1-800-267-9438
- **Northern Municipal Services Office (Sudbury)**
Telephone: 705-564-0120 or 1-800-461-1193
- **Northern Municipal Services Office (Thunder Bay)**
Telephone: 807-475-1651 or 1-800-465-5027
- **Western Municipal Services Office**
Telephone: 519-873-4020 or 1-800-265-4736

Additional Resources

- Municipal Act, 2001: <https://www.ontario.ca/laws/statute/01m25>
- The Ontario Municipal Councillor's Guide: <https://www.ontario.ca/document/ontario-municipal-councillors-guide-2018>

Proxy Voting for Municipal Council Members

July 2020

This document is intended to give a summary of complex matters. It does not include all details and does not take into account local facts and circumstances. This document refers to or reflects laws and practices that are subject to change. Municipalities are responsible for making local decisions that are in compliance with the law such as applicable statutes and regulations. This document applies only to those municipalities whose meeting rules are governed by the Municipal Act, 2001.

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Overview

The province is providing municipalities with the flexibility to choose to allow proxy votes for municipal council members who are absent. This power helps ensure continuing representation of constituents' interests on municipal councils when a member is unable to attend in person due to, for example, illness, a leave of absence, or the need to practice physical distancing.

Municipalities that wish to allow proxy voting must amend their procedure bylaws to allow a member of council to appoint another member of the same council to act in their place when they are absent.

Optional and Flexible

Allowing proxy voting is optional and it is up to each municipality to determine whether to allow proxies for council and under what circumstances. If a municipal council chooses to allow proxy voting, it is up to each member to decide whether they wish to appoint a member of that council as a proxy or not if they are to be absent.

Municipalities have the flexibility to determine the scope and extent of proxy appointments including, for example, any local rules or limitations, the process for appointing or revoking a proxy, and how proxyholders may participate in meetings. Municipalities may wish to consider:

- how proxies may be established and revoked;
- circumstances where proxies may or may not be used; and
- how a proxyholder may participate in a meeting including voting, speaking, or asking questions on behalf of the appointing member.

If a municipality chooses to allow proxy voting, it would be the role of the municipal clerk to establish a process for appointing and revoking proxies. Municipalities may also wish to consider addressing proxy voting in their code of conduct or other local policies to help ensure that votes are appropriately cast and that the local process is followed.

Once a proxy has been appointed, the appointing member could revoke the proxy using the process established by the municipal clerk.

Limitations

Limits to the proxy appointment process are set out in legislation. These include:

- A proxyholder cannot be appointed unless they are a member of the same council as the appointing member:
 - For upper-tiers, this means that a proxyholder has to be a member of the same upper-tier council as the appointee, regardless of lower-tier membership;

- A member cannot act as a proxyholder for more than one other member of council at a time;
- An appointed proxy is not counted when determining if a quorum is present;
- A member appointing a proxy shall notify the municipal clerk of the appointment in accordance with a local process established by the clerk; and
- When a recorded vote is taken, the clerk shall record the name and vote of every proxyholder and the name of the member of council for whom the proxyholder is acting.

Council member absence rules still apply. This means that a member's seat would become vacant if they are absent from the meetings of council for three successive months without being authorized to do so by a resolution of council.

Accountability and Transparency

Members appointing proxies or acting as proxyholders are required to follow existing accountability and transparency requirements. For example, a member may not appoint a proxy or serve as a proxyholder on a matter in which they have a pecuniary interest under the *Municipal Conflict of Interest Act*. Municipalities may also want to consider transparency measures such as:

- communicating to the public who has appointed a proxy and who is serving as a proxy;
- publishing meeting agendas in advance so that proxies can be appointed, if needed, and potential conflicts of interest can be identified; and
- allowing members to participate electronically when not able to attend meetings in person rather than appointing a proxy.

For more information about existing accountability and transparency requirements, including the Municipal Conflict of Interest Act, codes of conduct and the role of the local integrity commissioner, please see the [Municipal Councillor's Guide](#).

Contact

If you have questions regarding how these new provisions may impact your municipality, contact your local Municipal Services Office with the Ministry of Municipal Affairs and Housing.

- **Central Municipal Services Office**
Telephone: 416-585-6226 or 1-800-668-0230
- **Eastern Municipal Services Office**
Telephone: 613-545-2100 or 1-800-267-9438
- **Northern Municipal Services Office (Sudbury)**
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Additional Resources

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Appendix 3

The COVID-19 Economic Recovery Act, 2020 – Proxy Voting

Process to Appoint a Member of Council as a Proxy for Council Meetings

1. A Member of Council appointing a proxy shall by email simultaneously notify the City Clerk and the proxyholder of their absence as soon as possible before the scheduled Council meeting.
 - a. The email appointing the proxy shall detail whether the Proxyholder is given the proxy to vote on all matters or only on specific agenda items;
 - b. If the proxy is only for specific agenda items, these are to be listed in the email.
2. The Proxyholder shall by email response, acknowledge their ability to fulfill their responsibility as a proxyholder for the matters outlined.
3. The City Clerk shall by email notify all members of Council of the designation of the proxy member for the Council meeting.

Revoking a Proxy

1. If the Member of Council who was to be absent wishes to revoke the proxy, the Member of Council shall by email notify the City Clerk and proxyholder of this change as soon as possible prior to the meeting.
2. The City Clerk shall by email notify all Members of Council notice of the revocation prior to the commencement of the meeting.

Conflict of Interest

1. If after appointing a proxy, a Member of Council discovers that they have a pecuniary interest described in subsection 5 (1) of the Municipal Conflict of Interest Act in a matter to be considered at a meeting that is to be attended by the proxyholder; the Member of Council shall:
 - a. as soon as possible, notify the proxyholder of the Conflict of Interest in the matter;
 - b. indicate that the proxy will be revoked in respect of the matter; and
 - c. request that the City Clerk revoke the proxy with respect to the matter in accordance with the proxy revocation process established by the City Clerk.
2. If, after appointing a proxy, a Member of Council discovers that they have a pecuniary interest described in subsection 5 (1) of the Municipal Conflict of Interest Act in a matter that was considered at a meeting attended by the proxyholder, the appointing member shall comply with subsection 5 (3) of the Municipal Conflict of Interest Act with respect to the interest at the next meeting attended by the appointing member after they discover the interest.

3. If the Proxyholder discovers that they have a Conflict of Interest in a matter to be considered at the meeting where they have proxy