

August 27, 2020

REPORT TO: Administration & Finance Executive Committee

FROM: Elizabeth (Lisa) Slomke, Clerk

SUBJECT: Procedure By-law Review – 1<sup>st</sup> DRAFT

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In October 2019, Council directed me to complete a review / rewrite of the 20-year old Procedural By-law. Further, Council indicated that sections of the new proposed wording would be reviewed by the Administration & Finance Executive Committee until a full first draft has been vetted. I have brought six reports forward which covered a significant amount of content in the draft Procedural By-law.

This report covers the first full draft of the compiled Procedural By-law. Some things to note when you review the attached Procedural By-law draft document:

- items highlighted in blue have come in one of the six reports to an Administration & Finance Executive Committee,
- items highlighted in yellow are still being worked on / researched,
- items not highlighted have not been part of any previous report, but as Clerk, I felt they were important aspects that were missing from the complete document, once I put it together.

This first full draft has been reviewed by the Senior Management Team and other staff to flush out some inconsistencies and irregularities. There may be some small housekeeping wording that has been amended subsequent to their feedback.

Since this entire process began in the fall of 2019, much has changed in the world. We have had to adapt quickly and we have moved most business to a virtual setting. I feel strongly that the changes and adaptations we have made have been done with an abundance of caution. During the upheaval from Covid-19, the Province of Ontario has made numerous legislative changes in order to enable municipalities to continue to operate and deliver the services that their residents desire.

The first change made by the Province was to permit electronic meetings. The Town passed the necessary by-law in early April and proceeded onto the virtual platform for Committee of the Whole, Council and Executive Committees. Since April, several other committees have also utilized the virtual platform (i.e. Committee of Adjustment and Non-Profit Housing).

In December 2019 and January 2020, Part 1 and Part 2 reports were presented which included content specifically related to 'Electronic Meetings'. A lengthy discussion took place and the Administration & Finance Executive Committee decided that at that time they would proceed with permitting electronic participation at Executive Committee meetings only with certain rules in place. Please note that an Appendix attached to this draft Procedural By-law has been crafted with this direction in mind. Additionally, I have crafted another Appendix in an effort to provide Council with the flexibility moving forward (should another emergency present itself), which would return us back onto the virtual platform without the need to amend any by-law.

I have added to my report (ahead of the draft Procedural By-law) supporting information from the Province of Ontario related to Electronic Meetings and Proxy Voting. At this time and in light of Covid-19, I suggest a further discussion respecting Electronic participation and proxy voting takes place to ensure that the draft procedural by-law I put forward addresses these matters if necessary.

I believe that a review of the Procedural By-law should take place every term of Council. It is a wonderful tool, when reviewed, which puts everyone on the same page procedurally and strengthens the team dynamic.



# 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

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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**  
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