

# Proxy Voting for Members of Council Guide for Ontario Municipalities

On July 21st, 2020, the Ontario government made amendments to the [Municipal Act, 2001](#) which allows municipalities the option of authorizing proxy voting for Members of Council. With Bill 197: *The COVID-19 Economic Recovery Act, 2020*, municipalities that wish to allow proxy voting must amend their procedure bylaw to allow members of council to appoint another member of the same council to act in their place when they are absent.

The Province has positioned proxy voting as a way to “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.”

While this allows a member of council to continue to represent the interests of their constituents should they be waylaid by illness, such as contracting COVID-19, it could also be applied to a leave of absence, such as parental leave, a policy for which is now mandatory under [s.270 of the Municipal Act](#) (MA) as a result of amendments made through Bill 68: *The Modernizing Ontario’s Municipal Legislation Act, 2017*.

While there are a number of international legislative bodies at a provincial, state or federal level that have utilized proxy voting to conduct business, an initial scan of jurisdictions at the local level suggest that such a mechanism is unique in its application to members of a municipal council.

## Legislative Considerations

The legislative provisions related to proxy voting for members of council are permissive and broadly written. This provides a municipality with the flexibility to craft an approach that works for their situation, subject to the rules set out in the legislation.

In accordance with a process established by the clerk, a member of council may appoint (“appointing member” hereafter) another member of the same council as a proxy (“proxyholder” hereafter) to act in their place when the appointing member is absent, subject to the following rules:

- The proxyholder must be a member of the same council as the appointing member.
- A member cannot act as a proxyholder for more than one member at a time.
- The appointing member must notify the clerk of the appointment consistent with any processes established by the clerk.
- In determining quorum, the proxyholder is to be counted as one member only.
- The appointing member must be considered absent from the meeting for the purpose of determining whether the office of the member is vacant under the *MA*.
  - This means that this process does not override the statutory requirements of one of the key vacancy and forfeiture provisions of the *MA*.
- A proxy must be revoked if the appointing member or the proxyholder requests that the proxy be revoked and complies with a proxy revocation process established by the clerk.
- In instances where a recorded vote is taken, the clerk must record the names of each proxyholder, the name of the appointing member, and the vote cast on behalf of that member.

Bill 197 also contains rules for proxy voting and pecuniary interest of members:

- A member who has a pecuniary interest as described under the [Municipal Conflict of Interest Act 1990](#), in a matter to be considered at a meeting cannot appoint a proxy on the matter if the interest is known to that member.
- Should an appointing member become aware before or during a meeting that they have a conflict of interest, and has appointed a proxyholder, the appointing member must:
  - Notify the proxyholder of the conflict of interest in the matter and indicate that the proxy will be revoked with regard to the matter;

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- Request that the clerk revoke the proxy with regard to the matter in accordance with an established proxy revocation process established by the clerk.
- Should a member become aware of a conflict after the meeting, the member must comply with the Municipal Conflict of Interest Act with respect to the declaration of interest at the next meeting.
- If a member of council is unable to participate in a meeting because of a pecuniary interest, they cannot participate in a meeting as a proxyholder for another member. See section [s. 243.1\(6\) of the Municipal Act](#) for details.
- Bill 197 amendments also empower the Minister to make regulations providing for any matters in regard to proxy voting, however, up to the publishing of this guide, no regulations have been made.

## Implementation

If a municipality chooses to allow proxy voting, then the procedure bylaw will require amendments to allow for the use of proxy voting.

Prior to considering whether or not to authorize proxy voting, council may want to seek advice from legal advice. There may be implications for the use of proxy votes in council decision-making as an avenue to apply a legal challenge as a result of disqualifying bias. The leading common law case on the issue of bias is [Old St. Boniface Residents Assn. Inc. v. Winnipeg \(City\), \[1990\] 3 S.C.R. 1170](#).

## Procedure Bylaw Amendments

Should your council choose to allow proxy voting, the municipality's procedure bylaw will need to be updated and amended. Amendments could include but are not limited to:

- Allowing the use of proxy voting during meetings.
- Indicating application and scope of the use of proxy voting such as:
  - Use at Council meetings only or;
  - Extending use to committee meetings;
  - Applying for all decisions of Council or;
  - Setting certain exceptions to its use (i.e. budget deliberations, land-use planning decisions or others) and;
  - Use in circumstances such as medical or parental leaves.
- Stating whether members can use proxy voting for closed session matters.
- The rules as outlined in the *MA*.
- Managing pecuniary interest of an appointing member or proxyholder.
- Consideration for whether proxy voting can be used if members are allowed to participate electronically when they cannot attend the meeting in person ([see the resource on electronic meetings](#)).

## Updates to Existing Policies and Procedures

A few existing policies and procedures that may need to be updated to include provisions related to proxy voting:

- Council Code of Conduct
- Complaint Procedures related to Integrity Commissioners
- Agenda and minute development procedures
- Conflict of Interest Policies
- Parental Leave for Members of Council Policy

It may be helpful to involve your municipality's integrity commissioner in the review of the Council Code of Conduct and in the development of proxy voting processes – this may be especially important in the event that members of council or members of the public submit complaints about decisions made through the use of proxy.

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## Clerk's Processes

In line with s. 243.1 (2) of the *MA*, which provides the rules for proxy voting, the clerk must establish a process to implement proxy voting should the Council choose to amend their procedural bylaws to authorize proxy voting.

## Two-Tier Structures

Circumstances for upper-tier councils with regard to proxy voting should also be read in conjunction with other sections of the *MA*, which deal with matters of representation at the upper-tier. For instance:

- A member of a local council who is appointed as an alternative member under s. 267 of the *MA*, may appoint a member of the upper-tier council to act in their place when they are absent from the upper-tier council.
- S. 267 also provides direction on situations of temporary vacancies due to a member either being “unable to act as a member of [the local and upper-tier] councils for a period of exceeding one month” or when the offices of a member of both councils “become vacant and the vacancies will not be filled for a period exceeding one month”, then an alternate member may be appointed by the local council.
- Section 267 also states that it “does not authorize the appointment of an alternate head of council of the upper-tier municipality.”
- There are additional rules for upper-tier councils in s. 243:
  - A member who is unable to attend at a meeting of the upper-tier council and for whom an alternate member is appointed under s. 267 shall not appoint a proxy.
  - Absentee members under the *MA* cannot appoint a proxyholder where an alternate member has already been appointed.

## Implementation Process

In establishing an implementation process for proxy voting, a clerk must consider the rules as set out in the *MA* and might want to consider:

- The notification process a member must utilize to inform the clerk of the appointment of a proxy.
- What documentation must be filled out and provided to the clerk as part of the notification or use of a proxy (e.g. a form that provides the relevant meeting details and voting instructions provided to the proxy holder).
- What are the timelines by which a member must notify and provide any required documentation, ahead of a committee or council meeting, in order to utilize a proxy.
- Processes or guidance for the appointing member or proxyholder to declare a pecuniary interest and seek advice from an accountability officer.
- References to the requirement under [s. 5.1](#) of the *Municipal Conflict of Interest Act, 1990*, which requires a member to file a Written Statement of Disclosure of Interest Form after the member discloses a pecuniary interest under s.5 is embedded in this process.
- How declarations are captured in the municipality's registry of statements required under [s. 6.1](#) of the *Municipal Conflict of Interest Act*.
- What, if any, notification will be provided to other members of council and members of the public about the appointment and revocation of a proxy.
- What, if any process a proxyholder participating in a meeting of committee or council must follow when they are voting, speaking or asking a question on behalf the appointing member.
- Guidance for managing closed session matters.
- The procedure and/or process for how a vote, made by the proxyholder on behalf of an appointing member, is recorded and included in official meeting minutes when a recorded vote is taken (**Note: this is required by the rules for proxy voting set out in the Municipal Act**):
  - For a recorded vote under s. 246, the clerk must record the name of each proxyholder, the name of the member of council who appointed the proxyholder and the vote cast on behalf of the appointing member.

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- This requirement should be embedded in any existing process or procedures used by the clerk for the development of official meeting minutes.
- Tracking the number of proxyholders appointed for a given meeting to ensure quorum is maintained.
- Whether the proxy vote will be recorded in votes taken by methods other than a recorded vote.
- The procedure and/or process for how a proxy vote may be captured as part of a member's voting recorded and is made available to the public, if applicable.

### Revocation Process

In addition, clerks are required to have a revocation process. This could form part of an overall process with regard to proxy voting or could be a separate process. In establishing a revocation process for proxy voting, a clerk must consider the rules as set out in the *MA* and might want to consider:

- How the appointing member will notify the clerk and the appointed proxyholder of the revocation and provide a process to follow.
- What notification could be provided to other members of council and members of the public of the revocation.
- How the process will be used and applied in the event the appointing member or proxyholder have declared a conflict of interest on a matter before, during or after a meeting.
- How to manage the revocation of a proxy in the event that the appointing member attends the meeting they were expected to be absent from and had appointed a proxyholder.

### During Meetings

In line with the rules prescribed by the *MA*, a clerk must:

- Record the appointing member as absent from the meeting.
- Count the proxyholder as one member for the purposes of quorum.
- Record the vote made by the proxy holder, the name of that proxy holder and the name of the member for whom the member are acting as proxy.

### Post-Meeting

In the development of meeting minutes, the clerk should include how the proxyholder voted on behalf of the appointing member where there was a recorded vote requested. Some consideration may have to be given to recording all votes the proxyholder was authorized to hold on behalf of an appointing member, in line with any instructions that may have been given to a proxyholder by the appointing member.

If there is a process in place for keeping voting records of members of Council, a clerk will also have to determine how best to record a proxy vote both for the appointing member and for the proxyholder.

### Moving Forward

As of November 1, 2020, only 1 municipality that AMCTO is aware of has implemented proxy voting by making a change to its procedural bylaw, while a handful more have brought forward reports but Councils have decided not to authorize the use of proxy voting.

As proxy voting remains a new option for municipalities at the time of the publishing of this guide, it means that there is still much to learn and consider when implementing proxy voting. AMCTO will continue to track those municipalities who have chosen to authorize proxy voting. If your municipality is considering or has successfully implemented proxy voting, please contact [AMCTO](#).

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## Acknowledgements

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