

**Subject:** Electronic Participation and Proxy Voting

**Department:** Corporate Services

**Division:** Clerks

**Report #:** CPS-CL-2020-023

**Meeting Date:** September 14, 2020

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**Orangeville Forward – Strategic Plan**

**Priority Area:** Strong Governance

**Objective:** Transparent and fair decision-making processes

**Priority Area:** Strong Governance

**Objective:** Positive relationships with other governments, agencies and private sector

**Sustainable Neighbourhood Action Plan**

**Theme:** Corporate and Fiscal

**Strategy:** Create and integrate sustainability principles into Town policies, processes and practices

## **Recommendations**

**THAT Report CPS-CL-2020-023 regarding Electronic Participation and Proxy Voting be received;**

**AND THAT staff bring forward a by-law to amend By-law 064-2017, being a By-law to govern the proceedings of Council and its Committees to provide for electronic participation and proxy voting for members of Council, for Council consideration and approval.**

## **Background**

Due to the Novel Corona Virus 19 (COVID-19) pandemic, the Government of Ontario declared a state of emergency and subsequently enacted a variety of emergency measures. As a result, the *Municipal Emergency Act, 2020* (Bill 187) was enacted to amend the *Municipal Act* to allow a municipality to amend its

procedure by-law to provide for electronic participation during any period where an emergency has been declared to exist in all or part of the municipality under the *Emergency Management and Civil Protection Act (EMCPA)*.

The Town of Orangeville subsequently declared a State of Emergency pursuant to the *EMCPA* and Council passed an amendment to By-law 064-2017 being a By-law to govern the proceedings of Council and its Committees, to provide for electronic participation for the period of the declared emergency.

The provincial emergency declaration expired on July 24, 2020 and the Province continues to ease certain restrictions related to the COVID-19 pandemic. As part of that effort, the Government of Ontario passed the *COVID-19 Economic Recovery Act, 2020* (Bill 197), which received Royal Assent on July 21, 2020.

The *COVID-19 Economic Recovery Act* amends several pieces of legislation including certain provisions of the *Municipal Act, 2001* to provide municipalities with new permissive authority. In particular, the electronic meeting provisions, initially introduced as a temporary measure to enable municipalities to continue to operate, have now become permanent. The Act also permits municipalities to exercise new powers with respect to proxy voting for members of Council.

This report addresses the following for Council's consideration and awareness:

- 1) the new permissive authority regarding electronic participation and proxy voting; and
- 2) the phased approach to returning Council and Committees back to meeting in person, during the different stages of the recovery period related to the COVID-19 pandemic.

## **New Permissive Authority**

### **Electronic Participation**

Further to report CPS-CL-2020-020 Town Council and Committee Meetings, Council at its July 13, 2020 meeting decided that electronic participation be permitted for Council and committee meetings on a permanent basis. Council opted to exercise the permissive authority provided by Section 238 of the *Municipal Act*, which, up until that time, outlined that outside of a declared emergency:

1. Electronic participation was an option only for open meetings. To participate in a closed meeting, members would need to be physically present at such meeting;
2. For a Council or committee meeting to proceed, there had to be a quorum of members physically present at the meeting, while other members

participated electronically. Thus, members who participated electronically could participate but not be counted towards quorum.

With the new amendments to the *Municipal Act* now in effect, as a result of *COVID-19 Economic Recovery Act, 2020*, municipalities now have expanded authority and the option to amend their procedure by-law to:

- provide for electronic participation in open and closed meetings; and
- determine if members participating electronically may be counted towards quorum beyond times of a declared emergency.

Specifically, subsections 3.1 to 3.5 of Section 238 of the *Municipal Act* now read as follows:

*Electronic Participation*

*(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law.*

*Subsection 238 (3.2) of the Act is repealed.*

*(3.3) The applicable procedure by-law may provide that,*

- (a) a member of a council, of a local board or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and*
- (b) a member of a council, of a local board or of a committee of either of them can participate electronically in a meeting that is open or closed to the public.*

*Special meeting, amend procedure by-law re electronic participation*

*(3.4) A municipality or local board may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (3.3).*

*Same, quorum*

*(3.5) A member participating electronically in a special meeting described in subsection (3.4) may be counted in determining whether or not a quorum of members is present at any time during the meeting.*

These provisions allow municipalities the option to retain the flexibility they have been afforded throughout the declared emergency and enable them to adapt to future changing circumstances. Council now has the option to determine the extent to which electronic participation may be adopted for Council and committee meetings on a permanent basis. This includes allowing fully electronic meetings where all members participate remotely, allowing electronic

participation according to an established framework and restrictions, or not allow it at all.

To further support Council's decision, as made on July 13, 2020, to allow electronic participation for Council and committee meetings on a permanent basis, staff recommend that the following options be adopted:

1. Electronic participation on a permanent basis for closed meetings, as well as open meetings, according to certain provisions;
2. Members participating electronically at any point in time be counted towards quorum

### **Electronic Meeting Provisions**

In-person attendance by members of Council and committees is important because it enhances accountability and transparency in the decision-making process and further supports good governance. For this reason, staff recommend that the following provisions be adopted for circumstances outside of a declared emergency and in the absence of public health and workplace safety restrictions:

1. The Clerk to establish and maintain procedures with respect to electronic participation
2. Attendance
  - A physical quorum (a majority of the members) at a meeting of Council or committee must be maintained
  - The Clerk and Mayor (or Deputy Mayor if acting as Chair) are to be physically present in Council Chambers
  - Members wishing to participate electronically for a Council meeting, must provide the Clerk (or designate) no less than 72 hours notice prior to the scheduled meeting, to ensure that electronic participation can be facilitated.
3. Delegates and Presenters
  - Delegates and Presenters will be encouraged to physically attend the Council and/or committee meeting they would like to speak at. However, if it is not possible for them to do so, the option of participating electronically may be provided to them at the discretion of the Clerk, if technology permits.
4. Public
  - Should electronic participation by delegates and presenters be adopted effectively, the feasibility of providing the public the option to participate electronically during Public Question Period will be assessed.

## 5. Staff

- Staff will be required to attend Council and/or committee meetings in person when appropriate. However, if it is not possible for them to do so, the option of participating electronically may be provided to them at the discretion of the Chief Administrative Officer, if technology permits.

## 6. Committees

- A physical quorum (a majority of the members) at a committee meeting must be maintained
- The Committee Secretary and Chair (or designate) are to be physically present at the meeting location
- Members wishing to participate electronically for a committee meeting, must provide the Committee Secretary no less than 72 hours notice prior to the scheduled meeting, to ensure that electronic participation can be facilitated.
- Electronic participation for committee members will continue to be facilitated through the same technology platform used to date (i.e. telephone conference line).
- The public will continue to have access to listen to committee meetings via a telephone conference line, the connection details will be listed on the agenda.
- These capabilities will be re-assessed once there has been an opportunity to work through and adapt to the new electronic meeting provisions.

For circumstances where there is a declared emergency and/or public health and workplace safety restrictions are in effect, the following would apply:

## 1. Council

- A scheduled Council meeting may be cancelled or re-scheduled by the Clerk and CAO in consultation with the Mayor and/or Chair
- Fully electronic Council meetings may take place and quorum will be determined by member participation in the electronic meeting
- the Clerk and Mayor (or Deputy Mayor if acting as Chair) are to be present in Council Chambers, unless otherwise noted on the agenda
- If a fully electronic meeting takes place, delegates, presenters, staff, and the public will be provided an electronic means to participate
- The public is to be provided with sufficient and reasonable notice of an electronic meeting of Council and the method to access the meeting remotely
  - For regularly scheduled meetings, the notice provisions outlined in the procedure by-law will be adhered to
  - For special meetings, as much notice as reasonably possible of an electronic meeting and the method to access the meeting remotely

## 2. Committees

- A scheduled committee meeting may be cancelled or re-scheduled by the Clerk (or designate) in consultation with the Chair
- Fully electronic committee meetings may take place and quorum will be determined by member participation in the electronic meeting
- The Committee Secretary and Chair (or designate) are to be present at the meeting location, unless otherwise noted on the agenda
- If a fully electronic meeting takes place, delegates, presenters, staff, and the public will be provided an electronic means to participate
- The procedure by-law will be amended to include notice provisions for committee meetings that are consistent with that of Council meetings. As such, the public will be provided with notice of an electronic committee meeting and the method to access the meeting remotely.

Given that the recovery period with respect to COVID-19 is expected to be in effect for a prolonged period of time, it is recommended that these provisions be adopted for a period of up to one (1) year (if required) following the termination of the Town's declared emergency.

Lastly, to facilitate electronic participation on a permanent basis, there will be various technological challenges that need to be continuously addressed. The Clerk in consultation with the Information Technology division will regularly assess specific meeting formats, available technology, and related requirements, in order to determine an appropriate publicly available platform and process for electronic meetings.

### **Proxy Voting**

The *COVID-19 Economic Recovery Act, 2020* also provided municipalities with the authority to amend their procedure by-law to allow members of council who are unable to attend a meeting, to appoint a proxyholder to act on their behalf, subject to certain limitations.

Specifically, Section 243.1 of the *Municipal Act* reads as follows:

#### *Proxy vote*

*243.1 (1) The procedure by-law may provide that, in accordance with a process to be established by the clerk, a member of council may appoint another member of council as a proxy to act in their place when they are absent subject to the following rules:*

- 1. A member of a local council appointed as an alternate member of the upper-tier council under section 267 may appoint a member of the upper-tier council as a proxy to act in their place when they are absent from the upper-tier council.*

2. A member who is unable to attend a meeting of the upper-tier council and for whom an alternate member is appointed under section 267 shall not appoint a proxy.

3. A member appointed as an alternate member of the upper-tier council under section 268 shall not appoint a proxy.

4. A member who is unable to attend a meeting of the upper-tier council and for whom an alternate member is appointed under section 268 shall not appoint a proxy if the appointed member is acting on their behalf at the meeting.

#### *Rules re proxy votes*

(2) The following rules apply with respect to the appointment of another member of council to act as a proxy under subsection (1):

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 the 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 the purposes of determining whether the office of the member is vacant under clause 259 (1) (c).

#### *Pecuniary interest*

(3) A member who has a pecuniary interest described in subsection 5 (1) of the Municipal Conflict of Interest Act in a matter to be considered at a meeting shall not, if the interest is known to the member, appoint a proxy in respect of the matter.

#### *Same, pre-meeting discovery*

(4) If, after appointing a proxy, a member 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 shall, as soon as possible,

(a) notify the proxyholder of the interest in the matter and indicate that the proxy will be revoked in respect of the matter; and

(b) request that the clerk revoke the proxy with respect to the matter in accordance with the proxy revocation process established by the clerk.

#### *Same, post-meeting discovery*

(5) For greater certainty, if, after appointing a proxy, a member 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.*

*Conflict, etc., proxyholder*

*(6) For greater certainty, nothing in this section authorizes a proxyholder who is disabled from participating in a meeting under the Municipal Conflict of Interest Act from participating in the meeting in the place of an appointing member.*

*Regulations, proxy votes*

*(7) The Minister may make regulations providing for any matters which, in the Minister's opinion, are necessary or desirable for the purposes of this section.*

Given that these new proxy voting powers would provide members of Council with additional flexibility (should they not be able to attend a meeting) and further foster a continuity of decision making, staff recommend the adoption of proxy voting, per the following provisions:

- Proxy voting provisions will be in accordance with Section 243.1 of the Municipal Act, 2001.
- To appoint a Council member as a proxyholder, a form prescribed by the Clerk must be completed and submitted by the appointing member to the Clerk, after the agenda for the subject Council meeting has been published and prior to the commencement of the Council meeting
- The appointing member will need to declare that they do not have a pecuniary interest with respect to a matter on the agenda and are also not able to attend the meeting in person or electronically for the same meeting of the proxy appointment
- The appointing member and the proxy holder should make every reasonable effort to determine if a pecuniary interest exists prior to a proxy appointment
- If a pecuniary interest exists, the member(s) must take the necessary action as required by the Municipal Act and Municipal Conflict of Interest Act
- The proxy holder must confirm with the Clerk that they accept the proxy appointment prior to the commencement of the meeting
- The Clerk (at the beginning of a Council meeting) will notify members of the absent appointing member and proxyholder appointment for the meeting
- A proxyholder has the same rights as the member by whom they were appointed
- A proxyholder may act as proxy in person or electronically
- A proxy may be appointed by a member of Council who is on Parental or Pregnancy Leave
- A proxyholder may not appoint a delegate for the purposes of exercising the original appointment

- The appointing member may stipulate how votes are to be cast
- Once the proxy appointment is in effect, the appointing member confers discretionary authority to the proxyholder with respect to amendments to matters on the agenda
- Should the proxyholder not cast a vote on behalf of the absent member, it will not be considered a vote in opposition
- The proxy appointment will not apply to any new matters that were not on the agenda for the meeting
- In the event of an error in voting, the Town's present Code of Conduct does not provide a mechanism for review of the appointed member of Council's conduct and as such provides no recourse to the appointing member
- If a recorded vote is requested by a member of Council, the requester will vote first and the subsequent order of voting will be conducted alphabetically by last name, proceeding from the requester
- The appointing member shall not be counted for quorum and shall be marked absent from the meeting, in accordance with the Town's procedure by-law and the Municipal Act
- If the appointing member, who was to be absent, and after notification has been provided in writing to the Clerk, attends the Council meeting before the start of the meeting, the proxy appointment shall immediately be withdrawn from the meeting, and the appointing member shall assume their position at the Council meeting.
- After the start of a Council meeting, should a member decide to leave the meeting they may not appoint a proxyholder at that time for the remainder of the meeting
- The appointing member may rescind a proxy appointment any time prior to the commencement of a Council meeting, using a form prescribed by the Clerk
- A proxy appointment does not apply to any duties or responsibilities outside of a meeting

## **Recovery Period**

Municipal emergency declarations may end before the public health risks and restrictions associated with COVID-19 have ended. Therefore, staff recommend that Council adopt the proposed amendments to By-law 064-2017 being a By-law to govern the proceedings of Council and its Committees to ensure there is continuity in decision-making and that the business of the Town can continue.

Should Council adopt such provisions, fully electronic meetings may continue for a period of up to one (1) year (if needed) following the termination of the Town's declared emergency. However, as public health restrictions are lifted throughout the recovery period, there will be an effort to gradually establish a physical

presence in Council Chambers. This will be prioritized according to the following order (while respecting public health guidance and as technology permits):

Council and Public Meetings (Council Chambers capacity restriction is 13):

1. Members to gradually return to Council Chambers (with the goal of establishing quorum within the Chambers).
2. Delegates and Presenters to attend meeting in person to address their matter(s) at the podium (if not possible, then may attend electronically)
3. Staff to attend meeting in person as required to address their respective item(s) at the podium (if not possible, then may attend electronically)
4. The public gallery within Council Chambers will not be open to the public. Current electronic viewing and participation options will continue.

Committees:

1. Meetings to remain fully electronic
2. Meetings will continue to be accessible to the public via telephone conference line, where residents may call in to listen live. There is no web streaming or recording of committee meetings.

## **Financial Impact**

As Council and committees increase their uptake of electronic participation, there may be a need to make investments in new or supplementary technology solutions and other additional resources to support the provision of electronic meetings going forward. Any additional funding required will be included in annual budget submissions.

Respectfully submitted

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Attachments: None