



Staff Report for Council Meeting

Date of Meeting: September 23, 2020

Report Number: SRCM.20.23

Department: Office of the City Manager

Division: Office of the Clerk

Subject: SRCM.20.23 – Proxy Voting by Members of Council

Purpose:

To provide Council with information on recent amendments to the *Municipal Act, 2001*, S.O. 2001, c.25, (the "Act" or "Municipal Act") that permit proxy voting on behalf of Members of Council absent from a meeting.

Recommendation(s):

- a) That staff report SRCM.20.23, Proxy Voting by Members of Council, be received for information.

Contact Person:

Stephen M.A. Huycke, Director, Legislative Services/City Clerk, extension 2529.

Report Approval:

Submitted by: Stephen M.A. Huycke, City Clerk

Approved by: Mary-Anne Dempster, City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

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Background:

At the Special Council meeting held on July 23, 2020, Council received staff report SRCM.20.19 and adopted resolution which included the following clause:

- b) That the City Clerk report back to Council on the proposed amendments to the Municipal Act, 2001, which, if passed, will permit proxy voting by Members of Council at a meeting.

On July 21, 2020, Bill 197, the *COVID-19 Economic Recovery Act, 2020*, (“Bill 197”) received Royal Assent. As a result of Bill 197, the Municipal Act has been amended and added a new Section 243.1 which permits proxy voting by Members of Council. An extract of Section 243.1 of the Act is included as Attachment A.

As further discussed below, staff do not recommend implementing proxy voting by Members of Council.

Summary of Proxy Voting provisions

Section 243.1 of the Municipal Act allows the City’s Procedure By-law to be amended to provide that, in accordance with a process to be established by the clerk, a Member of Council (“Member”) may appoint another Member of Council as a proxy to act in their place when they are absent from a meeting. The following summarizes the general rules relating to proxy voting:

1. A Member can only appoint another Member of the same Council as a proxy.
2. A Member cannot act as a proxy for more than one Member at any one time.
3. The Clerk must be notified about the appointment of a proxy in accordance with the procedures established by the Clerk.
4. For determining the presence of quorum, a proxyholder only counts as one Member (i.e. the Member who has appointed a proxy does not count towards achieving quorum).
5. For a recorded vote, the minutes must reflect the name of any proxy and the Member on whose behalf the proxy vote is being cast.
6. A Member can revoke a proxy provided that they comply with the revocation process established by the Clerk.
7. A Member appointing a proxy is considered absent from a meeting for the purpose of determining if an office is vacant under Section 259(1)(c) of the Act (i.e. if a Member is absent from the meetings of Council for three successive months without being authorized to do so by a resolution of Council their seat is vacant even if they have appointed a proxy for any of those meetings).

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Municipal Conflict of Interest Act

Sections 243.1(3) to 243.1(6) of the Act address how declarations of pecuniary interests under the *Municipal Conflict of Interest Act* (MCIA) apply to proxy voting. Those rules are summarized as follows:

1. A Member who has a pecuniary interest in a matter to be considered at a meeting shall not, if the interest is known, appoint a proxy for that matter.
2. If the pecuniary interest is identified after appointing a proxy, the Member who appointed the proxy shall as soon as possible:
 - a. Notify the proxyholder and indicate that the proxy is revoked; and
 - b. Request to Clerk to revoke the proxy in accordance with the procedures established by the clerk.
3. If a Member who has appointed a proxy discovers that they have a pecuniary interest after a meeting, they are required to comply with Section 5(3) of the MCIA and declare that interest at the next meeting.
4. A proxy voter who is not permitted to participate in a meeting under the provisions of the MCIA cannot participate in the meeting in the place of an appointing member.

Section 243.1(7) of the Act allows the Minister of Municipal Affairs and Housing to make regulations providing for any matters the Minister deems necessary related to proxy voting. No regulations have yet to be put into effect.

Implementing Proxy Voting

It is not recommended that Council implement proxy voting for Council meetings at this time. Staff are concerned that the rules in Section 243.1 do not address the impact on Council decisions where a proxy vote is cast and the Member subsequently discovers that they have a pecuniary interest in that decision under the MCIA. For example, if the vote on a matter is a close vote (e.g. 5 to 4), if a pecuniary interest is subsequently discovered that could call into question the legitimacy of the whole vote and any actions taken in response to the decision. Additionally, the introduction of proxy voting includes the requirement for the Clerk to develop many procedures to address various scenarios. Council has already had to implement significant adaptations to its meeting processes as a result of COVID-19. It is not recommended that additional changes be put into effect at this time.

Staff also believe that proxy voting is also not necessary in view of Council's recent amendments to Article 12 (Electronic Meeting Procedures) of the Procedure By-law. On July 31, 2020, Council amended Article 12 to permit Council to pass a resolution to allow Members to continue electronic participation in meetings after COVID-19 restrictions are lifted. It is expected that allowing Members to continue to participate electronically in meetings reduces the need for proxy voting (i.e. if the Member cannot attend in person for any reason they can still participate in a meeting).

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Should Council want to implement proxy voting for Council and committee meetings a resolution should be passed directing the City Clerk to place any necessary by-law on a future Council agenda for approval. If Council so directs, the Clerk will begin to develop the procedures required under Section 243.1 of the Act.

Financial/Staffing/Other Implications:

None.

Relationship to the Strategic Plan:

This report is related to recent legislative changes.

Conclusion:

Council directed the City Clerk to report back on amendments to the Municipal Act that would, if the Procedure By-law was amended, permit proxy voting by Members of Council. Staff are not recommending the implementation of proxy voting at this time.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. If you require an alternative format please call the contact person listed in this document.

- Attachment A – extracts of Section 243.1 of Municipal Act, 2001

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Report Approval Details

Document Title:	SRCM.20.23 - Proxy Voting by Members of Council.docx
Attachments:	- SRCM.20.23 - Attachment A - extract of Section 243.1 of the Municipal Act.docx
Final Approval Date:	Sep 16, 2020

This report and all of its attachments were approved and signed as outlined below:

MaryAnne Dempster - Sep 16, 2020 - 2:36 PM