

# Electronic Meetings and Proxy Voting - The Proposed “New Normal” for Municipal Meetings

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## INTRODUCTION

In an emergency sitting of the Provincial Legislature on March 19, 2020, the *Municipal Emergency Act, 2020* was enacted. This statute amended the *Municipal Act, 2001* to provide municipalities with the ability to conduct meetings of council and local boards (and their committees) entirely electronically for the duration of the local or provincial emergency. Following the initial adjustment period, it was discovered that virtual meetings of local government actually worked not too badly.

What was proposed to be a temporary emergency measure will now become permanent. On July 8, 2020, the Minister of Municipal Affairs and Housing introduced Bill 197, an omnibus piece of legislation that, if adopted, would allow local governmental bodies to continue to hold meetings in an electronic or remote manner. Bill 197 would also make changes to a variety of other municipal and land use planning and development statutes. For a summary of proposed amendments to the *Planning Act*, the *Development Charges Act, 1997*, the *Building Code Act, 1992* and the *Ministry of Municipal Affairs and Housing Act*, please refer to this article prepared by our colleague Laura Dean.

Bill 197, which passed first reading in the Ontario Legislature, would enact the *COVID-19 Economic Recovery Act, 2020* (the “Act”) and by Schedules 2 and 12 amend both the *City of Toronto Act, 2006* and the *Municipal Act, 2001* to allow members of a council, local board or a committee of either of them to participate electronically in meetings - without the need for the physical presence of any member at a particular location. Bill 197 would also introduce an entirely new power of proxy voting for members of a council.

While there is no denying the proposed changes would provide important tools that arguably are necessary to allow municipalities to continue to conduct local business in a quickly changing world, the obvious danger is the possibility that these new powers could be used, inadvertently or otherwise, in a manner that is counter to the principles of good governance. As local governments transition into a more modernized era of meetings, it will be of absolute importance for municipalities and their members to keep the fundamental principles that have underpinned the rules on meetings for nearly a century at the forefront of mind; namely, the principles of accountability, transparency and integrity in local decision-making.

## BACKGROUND

The “open meeting rule”, as it is commonly known, has existed in various forms in Ontario municipal legislation since it was added to the *Consolidated Municipal Act, 1922*. The open meeting rule is founded on the principle that members of the public have the right to witness the local democratic process. Many amendments have been made over time to expand the open meeting rule with the aim of increasing accountability, transparency and integrity in local decision-making. In its current form, the open meeting rule provides that all meetings of council, local boards or committees of either of them must be open to the public, subject to specific statutory exceptions that have traditionally been strictly interpreted and narrowly construed.

Until recently, members could only attend meetings in person. In 2017, the *Modernizing Municipal Legislation Act, 2017* (Bill 68) amended the *City of Toronto Act, 2006* and the *Municipal Act, 2001* to include a limited power to permit electronic participation at meetings. A municipality could provide for the

manner and extent of electronic participation at meetings in the procedure by-law, but members participating electronically could not attend closed meetings or count toward quorum.

As noted, in response to the COVID-19 outbreak and the corresponding sudden impossibility of in-person meetings, the statutory council meeting provisions were amended by the *Municipal Emergency Act, 2020* (Bill 187) to include an exception to the rule that members participating electronically could not attend closed meetings or count toward quorum when an emergency order is in place under the *Emergency Management and Civil Protection Act*.

Neither the *City of Toronto Act, 2006* nor the *Municipal Act, 2001* presently permits voting by proxy for members of council.

## THE PROPOSED AMENDMENTS

Schedules 2 and 12 of Bill 197 would amend the *City of Toronto Act, 2006* and the *Municipal Act, 2001* to enable members to participate electronically in meetings, even in the absence of an emergency order, and to allow proxy voting for members of a council.

In terms of electronic participation at meetings of councils, local boards or committees of either of them, the proposed amendments, in addition to continuing to give municipalities discretion to decide the manner and extent of electronic participation at meetings, would give municipalities the power to decide whether members participating electronically could attend closed meetings or count toward quorum, even in the absence of an emergency order.

In terms of proxy voting, new sections would be added to the *City of Toronto Act, 2006* (s. 194.1) and the *Municipal Act, 2001* (s. 243.1) to give municipalities the authority to permit proxy voting for members of a council. Proxy voting would proceed in accordance with a process to be established by the clerk and be subject to certain statutory rules. For example, a member could not act as proxyholder for a member of a different council. Procedures for dealing with conflicts of interest under the *Municipal Conflict of Interest Act* have also been proposed. The Minister of Municipal Affairs and Housing would have the power to make regulations under these new sections.

Schedules 2 and 12 of Bill 197 would come into force and effect on the day the Act receives Royal Assent.

## ANALYSIS

While the proposed amendments would give councils, local boards and their committees an increased ability to “pivot” and respond to changed circumstances, municipalities must be wary that this not come at the cost of accountability, transparency and integrity in local decision-making.

Clearly, it is essential that meetings be able to continue in a manner that protects public health and safety by allowing for proper physical distancing and other safety measures. Furthermore, as noted in the Minister’s statement in the Legislature, there is the real possibility that members may be unable to attend meetings at times in the future due to illness or other COVID-19-related constraints. The proposed changes would provide the flexibility that councils, local boards and committees of either of them will need to navigate the “new normal”.

If the proposed amendments are enacted, it will be essential that these powers be exercised judiciously; anything less could lead to skepticism and frustration in already uncertain times. Municipalities that wish to permit expanded electronic participation at meetings and to allow proxy voting should ensure the enabling provisions in their procedure by-laws are crafted in a manner that meets the needs of the municipality and its residents, businesses, institutions and all those who participate in the local democratic process.

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