

Subject: Consideration of Procedure By-law
Amendment, Proxy Appointments for Absent Municipal
Council Members, Pursuant to Bill 197, COVID-19
Economic Recovery Act

Recommendation:

**BE IT RESOLVED THAT Council receive Report #2021-0001,
Consideration of Procedure By-law Amendment, Proxy Appointments
for Absent Municipal Council Members, Bill 197;**

AND THAT Council not proceed with any form of proxy voting.

Background:

Amendments to the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (The Act) made pursuant to Bill 197, *COVID-19 Economic Recovery Act*, (Bill 197) include provisions to allow municipalities the option to permit proxy appointments for municipal council members who are absent. Initially reported to Council at the Special Meeting convened August 10, 2020, Clerks Report 2020-0121 outlined briefly the new provisions relating to proxy voting, noting that a comprehensive review was needed prior to presenting a staff recommendation report for Council consideration. See Appendix 1.

Clerks Report 2020-0160 dated November 16, 2020, once again referenced the ability to allow for proxy voting, noting that the rules regarding proxy appointments are significant in terms of policy development and that a 2021 report would follow to provide a thorough analysis of the new provisions. See Appendix 2.

In accordance with section 243.1 of The Act, the proxy appointment parameters are as follows:

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:

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 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 proxy holder 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 request 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). 2020, c. 18, Sched. 12, s.2.

At the Regular Council meeting of November 16, 2020, during consideration of amendments to the Procedural By-law to allow for extended electronic meeting duration, Council directed that the Procedural By-law be further amended by adding a provision for proxy voting by members of Council, and that this be brought for Council consideration in February 2021.

As with any substantive change in how a municipal Council conducts business, it is imperative that Council be provided the opportunity to review and debate the implications of a proxy appointment protocol, so as to determine when the use of such a provision would be appropriate. Staff considered a recommendation for limited use of proxy voting in the event of an unforeseen emergency situation, only because Council directed that a mechanism be presented in February, 2021. Staff are in no way supportive of even this limited use of proxy voting.

In conducting research for the preparation of this report, staff were unable to identify a single municipality amongst the 444 in the Province of Ontario that has exercised its capacity to utilize proxy voting. Staff did identify a number of municipalities that have considered the concept. Not one of them has endorsed the

idea after a public debate or staff report.

Analysis:

Presented below are considerations regarding the use of proxy appointment for Members of Council who cannot attend a meeting in person, which is deemed to include virtual attendance. For the purpose of this report, “in attendance” includes physical attendance or electronic attendance, both of which are considered to count in the quorum of the members present.

Fundamental Principles of Local Government:

Municipal Councils are mandated to conduct business in a manner that is open and accessible to the public. The open meeting provisions set out in The Act are founded on the principle that members of the public are entitled to witness local decision-making in a way that is accessible, accountable and transparent and that decisions are made with integrity.

Principles of a Meeting:

Council has adopted “*Meeting Procedures – Parliamentary Law and Rules of Order for the 21st Century*”, James Lochrie, as its parliamentary authority. Lochrie describes the fundamental essence of a meeting as “the equal opportunity of members to initiate ideas, oppose ideas, and to do so without coercion”.¹

Council meetings are required to be conducted in an open, transparent and accountable manner which is visible to the public, save and except for limited provisions to conduct a closed session, or *in camera*, meeting. Personal attendance at a meeting therefore underscores the importance of and adherence to The Act as it pertains to Council’s duty to conduct meetings in a manner that openly demonstrates the decision-making process. These principles have been supported throughout the COVID-19 pandemic, by convening meetings through electronic means while ensuring meetings are livestreamed to the public and video recordings later published to the municipal website. This format includes Public Meetings Under the Planning Act and demonstrates the Town’s commitment to accountability and transparency principles.

Of paramount importance in the decision-making process is the opportunity for decision-makers to explore new ideas through debate, the exchange of ideas through questions and responses, and also includes the potential for amendments to a recommendation to be heard and considered by all voting members. One important consideration for proxy voting is that any member not in attendance will

¹ Lochrie; Chapter One: Principles and Rules at Meetings

not have the benefit of any new information which may have influenced their position on any one topic, including but not limited to staff elaboration on reports, response to questions and any amendments to recommendations that may result.

Electronic Meeting Provisions:

It is the opinion of staff that electronic meetings accomplish virtually all of the purported benefit of proxy voting, by allowing someone to participate in the meeting from home, but simultaneously maintaining accountability. Staff would advise Council to simply continue deriving benefit from the Town's electronic meetings and not take the unprecedented step of going to proxy voting.

With the recent amendments to The Act through Bill 197, the municipality is afforded the ability to conduct Council meetings electronically. Attending members of Council are counted toward the meeting quorum, whether attending in person or through electronic means. This allows members of Council to attend a meeting virtually when, for example, one is experiencing mild symptoms of an illness that do not impede the ability to participate in debate and make decisions, but would prohibit in-person attendance particularly under the pandemic guidelines requiring people to stay home when feeling ill. Electronic meeting provisions also makes attendance at a Council meeting possible from a remote location not limited to the home or office of a member. Pelham has successfully implemented electronic meetings since the beginning of the pandemic, thus allowing the business of the municipality to continue with little to no disruption.

Statistics demonstrate the effectiveness of this approach in ensuring public access to meetings of Council, noting that livestream and subsequent video viewing continues to be embraced by the Pelham community, as seen in the graph below, Figure 1. This fact underscores the importance of ensuring the decision-making process is accessible to the public even during unprecedented times such as the current pandemic when physical attendance in the Council Chamber is not possible.

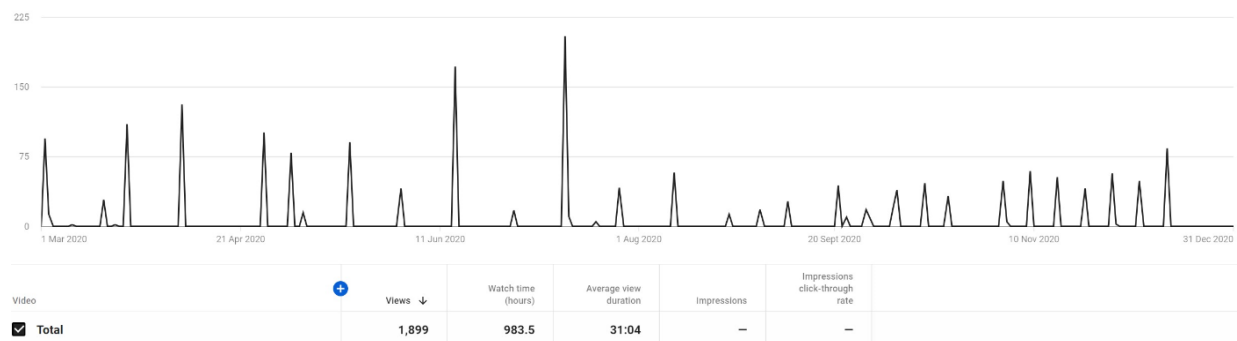


Figure 1.

As can be seen since the end of March, 2020, a total of 1,899 individual views have accessed a Pelham Council or Planning Meeting, whether it be the livestream or a subsequent viewing of the video recording.

Council has approved the provision for electronic meetings until August 31, 2021. Council will be asked to consider this provision on a more permanent basis when a complete review of the Procedure By-law is undertaken in 2021. Incorporating the ability for electronic meetings in whole or in part as a permanent provision in the Procedure By-law would allow the business of the corporation to continue, uninterrupted, when any unexpected situation arises. This provision would apply not only to situations relating to a pandemic, but could also be implemented during an extended weather or emergency event, etc.

Participating in a meeting either in person or through electronic attendance is considered vital because it underscores the fundamental parliamentary principles of why meetings are convened to arrive at a decision, where all members can be present and fully participate in deliberations on any given matter. All meeting attendees, including members of Council, registered delegations, and staff can fully participate in a way that is accessible to the public and allows for the full exchange of information. No member of Council is supposed to control more votes than any other member of Council.

During the pandemic period when electronic meetings have been convened, each member of Council is afforded the opportunity to initiate and oppose ideas relating to agenda items, participate in debate and hear discussion before coming to a final conclusion on any given matter while being able to protect the health of all stakeholders through physical separation. While this is not optimal given the reduced capacity for the public to sit in the Council Chamber to personally hear and witness the decision-making process, electronic meetings have allowed the business of the corporation to continue throughout the ongoing pandemic, with little to no interruption to the Council meeting schedule and in a manner that remains accountable to the public. The opportunity for a full exchange of ideas is fully afforded to all meeting participants through an electronic meeting, and provisions are in place to ensure that a quorum is present at all times. This alternative affords, most specifically, members who are physically or virtually present the ability to hear any new information that may be presented, hear responses to any questions by any member of Council, and give consideration to any applicable amendments before casting a vote, which supports the fundamental principles of a meeting and as such, supports the fundamental principles of democracy overall.

Need for Proxy Voting:

Given the demonstrated success of the Town's pivot to an electronic meeting

format to ensure compliance with public health guidelines for group gatherings and the need to facilitate physical distancing, it is recommended that Council not proceed with any form of proxy appointment provisions.

While permitted, proxy voting could be viewed by the public as contradictory to the basis of the open meeting provisions altogether. The use of proxy voting could also expose a member of Council to suggestions that a Councillor's mind was made up vacant of all of the facts, or support a notion that a small group of council members may have convened and predetermined the outcome of an issue before a full debate occurs publicly.

In a recent analysis of the concept of proxy voting which appeared in the local weekly newspaper, *"The Voice"*, November 25, 2020 edition, Brock University Emeritus Professor of Political Science, David Siegal, highlighted the importance of meeting as a group to make decisions. He said: "That sharing of views among members is seen as important," and "This is why boards generally do not countenance proxy voting or any other form of participation in decision-making without participating in the shared discussion that leads up to the decision making." Further, Dr. Siegal supports the notion that a member of Council could "enter a meeting with one view but switch views because of the nature of the discussion, or sometimes a member of the board might present one of those surprise blockbuster bits of information that puts the issue in a whole different light." These observations underscore the need for open meeting provisions and speak directly to the accountability and integrity principles of the decision-making process.

The use of a proxy appointment for members of Council may be more practical and palatable for communities that are not able to accommodate an electronic meeting format due to poor internet connectivity, however this has not been the experience for Pelham throughout the pandemic period.

Quorum Considerations:

Members who are being represented by a proxy do not count in the quorum for a meeting, as set out in The Act. While it is recognized that 100% attendance is optimal, this is not always practical. However, with the ability to attend a meeting electronically the potential for full attendance is easier to accommodate, save and except for unique circumstances where, for example, a member may be too ill to participate or if an unexpected emergency arises in the personal life of a member, resulting in an inability to attend either physically or virtually.

It is important to recognize that the quorum requirements for a municipal council acknowledge this possibility, and 100% attendance is not required in order to convene a legal meeting and allow decision-making to occur. There is no

fundamental harm in a single member missing a meeting: it happens all the time and has for decades, with no harm to the municipality. For the Pelham Council comprised of seven members, attendance by four is considered a quorum and constitutes the legal ability to make decisions. A member attending by proxy is not counted in the quorum and pecuniary interest declarations do not impact quorum requirements.

Examples of Proxy Voting in Ontario Municipalities:

As noted in previous reports, the provision to allow proxy voting is brand new and therefore no precedents have been set as to circumstances where a proxy provision might be adopted. The Province of Ontario is comprised of 444 municipalities, each governed by The Act as it relates to the conduct of meetings. At the time of writing, the Clerk was not able to find any examples of a municipality having adopted proxy voting for members of Council.

As previously noted, the introduction of proxy voting at Council meetings is an entirely new policy direction by the Province. Municipal staff throughout the Province continue to analyze the implications and will make recommendations to their respective Councils in the coming months.

While Council for the Township of Champlain received a report recommending the use of proxy voting, the Council did not adopt the recommendation. The City of Timmins considered a report with a recommendation not to consider the use of proxy voting, which position was adopted by Timmins Council.

Potential Consideration for Limited Use of Proxy Appointment:

If proxy appointments were to be adopted, there are circumstances when staff would strongly not recommend the use of a proxy appointment. If a member of Council is on a leave of absence, the member is not being compensated by the municipality and the appointment of a proxy vote in this circumstance is not recommended. This is likened to an employee being on a leave of absence – when you are not at work you do not participate in work so this would be similar for Council participation by proxy when on a leave of absence. It is important to note that the legislation specifically indicates that 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. As Council is aware, any absence longer than three months without a resolution of Council to permit an extension would result in the seat being declared vacant. In support of this provision in The Act, staff does not recommend allowing a proxy appointment during a leave of absence.

Policy S201-20 provides that a member of Council on pregnancy or paternal leave may continue to have access to all equipment and support and will continue to receive all remuneration and benefits afforded to all members of Council. The Councillor on such a leave has the ability to participate in events, conferences, committee and council meetings at the level they determine. If a Councillor chooses to cease attendance at committee or council meetings during this leave, it would be considered in the same manner as a leave of absence and not subject to proxy appointment provisions. However, if a member on a pregnancy or paternal leave regularly attends meetings but is unable to attend one due to a last-minute emergency it is still likely that a quorum would be achieved.

Given the ability for a member to attend a meeting virtually, a Council member would be able to attend a meeting even if located outside of the municipality, Province or Country, depending in internet connectivity. Council members are entitled to take a vacation and would be able to make a personal choice as to whether the vacation would include attendance at a Council meeting or not. Generally, the council meeting schedule is known to all members before year-end for the following year, save and except any special meetings that may be required. Further, the Clerk is generally aware of when Councillor vacation absences will occur, and can monitor the quorum requirements in this regard. It is not recommended that proxy appointments be permitted while a member is on vacation, particularly in light of the fact that proxy appointments do not count in the quorum. Members could attend virtually, or be absent from the meeting without impacting the decision-making ability of the council for quorum deficiencies.

In consideration of a personal emergency or illness resulting in a last-minute and unexpected inability to attend a meeting either in person or through an electronic platform may be one example of when a proxy appointment might be appropriate, although staff does not support this approach given that a legal meeting is likely to occur in compliance with quorum requirements regardless of whether or not a proxy is appointed in this circumstance. If a quorum is not achieved the meeting would be postponed regardless of a proxy appointment.

If a proxy appointment process is approved, it is recommended that the proxy appointment not be permitted to be exercised for new items added to the agenda as an addendum and not be applicable for voting on amendments or amended motions that may arise during a live meeting because the absent member has not had the opportunity to consider such new items or amendments.

Summary of Analysis:

In order to respect the fundamental principles of a meeting, together with the accessibility, accountability and transparency requirements of The Act, all of which

contribute to public confidence in the role of the elected official, physical attendance at a meeting is considered optimal to facilitate decision-making based on the ability to exchange ideas and consider relevant information, including amendments. The ability to allow for proxy voting could result in a disincentive to attend, and is recommended only as a last resort in an emergency situation when virtual attendance is not possible, if at all. Staff does not recommend the use of proxy appointments during an extended leave of absence. Further, staff does not recommend proxy appointments during a scheduled Councillor vacation, given the ability for electronic participation which counts toward a quorum.

Conclusion:

The Town of Pelham has been very successful in conducting electronic meetings since March of 2020, thus enabling the business of the corporation to continue throughout the ongoing COVID-19 pandemic. Participation by the majority of members of Council has been seamless, and attendance electronically counts toward the quorum requirements. Proxy attendance does not count toward quorum calculations. When weighed with the ability to attend electronically, it is staff's opinion that proxy attendance should not be approved or be limited to only extraordinary circumstances, if at all.

Recommended Option:

It is staff's recommendation that Council not proceed with adopting the use of proxy appointment provisions in the Procedure By-law.

Financial Considerations:

There are no financial implications.

Alternatives Reviewed:

For the reasons detailed in this report, proxy appointment is not recommended. Should Council determine it is appropriate to allow for proxy appointments, it is recommended that the policy dictate a very limited scope and only apply to an unforeseen personal emergency.

Should Council opt to allow proxy appointments, the Clerk be directed to present procedures with the following parameters:

- Limit to one member per meeting permitted to appoint a proxy to protect quorum requirements;

- Proxy appointment not applicable during a Leave of Absence or scheduled Vacation;
- Proxy appointment procedures shall be included in the Code of Conduct;
- Appointment of proxy be initiated as a last resort to be used in an unforeseen emergency situation preventing the member's physical or virtual attendance;
- The Clerk shall be informed of any proxy appointment, in writing and a register maintained similar in format to the Conflict of Interest Register required in The Act, made available for public inspection on the municipal website;
- The member appointed must accept the appointment and advise the Clerk in writing.

Council has the option to incorporate a broader approach to proxy appointments.

Strategic Plan Relationship: Communication and Engagement

In person attendance, as opposed to proxy appointments, supports community engagement and encourages open communication in the decision-making process.

Consultation:

AMCTO Municipal Portal and Web Search for Ontario Municipalities re Bill 197 Proxy Voting.

Other Pertinent Reports/Attachments:

Clerks Report 2020-0121, August 10, 2020 and Clerks Report 2020-0160, November 16, 2020

MMAH Proxy Voting for Municipal Council Members - Attached

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