

Reviews of Proxy Voting and the Pregnancy and Parental Leave Policy for Members of Council

Date: March 1, 2021
To: Executive Committee
From: Interim City Clerk
Wards: All

SUMMARY

The purpose of this report is to provide information on the merits of proxy voting and on options to strengthen Council's Pregnancy and Parental Leave Policy, both requested by the Executive Committee.

RECOMMENDATIONS

The Interim City Clerk recommends that:

1. City Council amend the Pregnancy and Parental Leave Policy for Members of Council to:
 - a. provide that if a Member does not intend to attend any committee or board meetings during the leave, Council may take steps to fill the Member's vacancies on committees and boards on a temporary basis during the leave, subject to the Member resuming their seat at the end of the leave;
 - b. authorize the use of the Council staff replacement budget to pay for one additional staff Member for the duration of the leave.

FINANCIAL IMPACT

There are no financial impacts resulting from this report.

Sufficient funding for the staff replacement budget is available in the approved 2021 City Council Operating Budget.

DECISION HISTORY

At its June 26, 27, 28 and 29, 2018 meeting, City Council, amongst other things, adopted a pregnancy and parental leave policy for members of Council
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX35.20>

At its January 23, 2020 meeting the Executive Committee requested the City Clerk to review the current Pregnancy and Parental Leave Policy for Members of Council, and report back to the Executive Committee with any recommended adjustments including but not limited to:

- a. maintaining Committee quorum during the leave period;
- b. notification and management of agency, board and commission appointments;
- c. possibility of a proxy vote or parental leave replacement;
- d. recording of votes during the leave period; and
- e. extra staffing support for the Council office during the leave period.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX12.11>

At its July 28, 2020 meeting City Council:

- Extended the use of electronic meetings for one year following the termination of the municipal and provincial emergencies; and
- Requested the City Clerk to report to the Executive Committee with options for Council to consider with respect to proxies.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX15.21>

COMMENTS

A. Proxy Voting

Recent statutory amendments permit electronic participation and proxy voting

Recent amendments to the City of Toronto Act permit Council to adopt procedure by-law amendments that:

- Provide for electronic participation in meetings of Council, committees and local boards; and/or
- Provide for Members of Council to appoint another Member of City Council as a proxy to act in their place when they are absent.

If a municipality chooses to adopt proxy voting, the following statutory rules apply:

- A Member can appoint another Member of Council to act for them in accordance with a process to be established by the City Clerk.
- A Member cannot hold a proxy for more than one Member
- The absent Member does not count for quorum
- A Member's unexcused absence counts towards the three-month limit before a seat is forfeited
- A Member with a pecuniary interest in a matter under the Municipal Conflict of Interest Act (MCIA) cannot appoint a proxy
 - If a Member appoints a proxy and discovers an interest before a meeting, the appointing Member must revoke the proxy
 - If a Member appoints a proxy and discovers an interest on a matter after the meeting, the Member must make a declaration at the next meeting.

Proxy voting is not recommended for City Council and its committees

City Council has adopted Robert's Rules of Order Newly Revised (RONR) as its parliamentary authority. It says:

"Ordinarily [a proxy] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and non-transferable."

Proxy voting conflicts with a Member being open to persuasion during debate on a matter. This includes information presented by public presenters, communications, City officials under questioning and the arguments advanced by their peers during debate. The need for an open mind is especially important when Council or its committees are meeting as an administrative tribunal, such as when it conducts hearings under the Planning Act or a property or sign by-law matter, where a lack of procedural fairness may lead to decisions being challenged or overturned.

Furthermore, while a proxyholder may have been instructed on voting on the main propositions contained on a published agenda, they will have not received instruction on late or new business added to a meeting, on amendments made during debate, or procedural motions to receive, refer or defer a matter. This requires the proxyholder to exercise discretion on behalf of the absent Member with no guarantee the vote cast reflects their views.

RONR says it this way:

"It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a legal meeting, although it should be noted that a member need not be present when the question is put. ... The votes of those present could be affected by debate, by amendments, and perhaps by the need for repeated balloting, while those absent would be unable to adjust their votes to reflect these factors."

Accordingly, it's recommended that City Council not adopt the proxy voting measures provided in the City of Toronto Act, especially as Council has adopted electronic participation as a method for absentees to take part in a meeting.

If, despite this advice, City Council wishes to adopt proxy voting for any or all circumstances, including parental leave, it should direct the City Clerk to prepare the necessary procedural by-law amendments and administrative procedures for committee and Council consideration. Procedural by-law amendments require a 2/3 vote of members present and voting at City Council.

B. Review of the Pregnancy and Parental Leave Policy for Members of Council

City Council has adopted a Pregnancy and Parental Leave policy for Members of City Council in accordance with Section 212 of the City of Toronto Act.

The City of Toronto Act requires that the City adopt a pregnancy and parental leave policy for members of Council, however it does not specify what this policy must contain.

The legislation grants no additional rights or benefits to Members who are on such a leave, other than that the Member on parental leave is protected, for 20 weeks, from the removal-from-office provisions of section 204 (1) (c) which states that:

"204 (1) The office of a member of city council becomes vacant if the member, (c) is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council;"

Highlights of Council's policy include:

- Council Members are eligible for up to 20 weeks of pregnancy leave or parental leave, without the need to be excused by Council;
- All rights and privileges associated with being a Member of Council continue during the leave, including salary and benefits;
- Members may continue to attend Council, committee and board meetings while on leave, if they so choose;
- Eligible Members may continue to manage their offices, or may delegate some administrative oversight to the City Clerk, or to the Deputy Mayor in the case of a Mayor's leave.
- If a Member of Council is absent from a meeting due to pregnancy or parental leave, the City Clerk will record the reason for the absence in the minutes of the meeting.

There are barriers to creating a stronger parental leave framework for Members

It's not possible to create a parental leave policy for Members of Council that mimics pregnancy and parental leave for employees.

First, Members are not employees, and therefore are not eligible for Employment Insurance pregnancy and parental leave benefits, and are not covered under the City's pregnancy and parental leave policies for staff.

Second, provincial law does not permit a temporary replacement to fill in for a Member on a parental leave. The Province would need to amend the City of Toronto Act to permit a "fill-in Councillor."

We have reviewed other jurisdictions with similar legislative arrangements for parental leave practices

- Some policies exist in Westminster-style parliaments where party and caucus infrastructures like whips exist and are therefore not directly applicable to our circumstances.
- None of the models reviewed provide for the temporary replacement of the elected official in their legislative duties (i.e., attending and voting at legislative meetings), though some like the "locum MP" model in the UK provide for someone to tend to constituency matters.
- Other Ontario municipalities are bound by the same legislative framework and therefore have not adopted policies including temporary replacements.

Analysis of issues raised by Executive Committee

The Executive Committee requested an analysis of the following suggestions:

- Maintaining Committee and Board quorum during the leave period

Quorum of Council, committee and City boards is not reduced by vacancy or absence. This may result in pressure on Members on leave to attend meetings to achieve quorum to compensate for other Members' absences. This can be remedied by amending the policy to provide that if a Member states their intent to be absent from committee and board meetings during their leave, Council can take steps to fill the position on a temporary basis with another Member of Council.

- Possibility of a proxy vote or parental leave replacement

For the reasons stated in Section A above, proxy voting is generally not recommended for Members, even while on parental leave. Members who choose to participate in meetings while on leave may make use of the electronic meeting provisions.

If Council wishes to extend proxy voting to Members on pregnancy and parental leaves, that proxy regime would be governed by the legislation described above such that a Member on leave would be restricted to appointing another Member of Council as a proxy holder and not a staff member or other person.

- Recording of votes during the leave period

The policy adopted by Council already provides that the Clerk will annotate the minutes of meetings so that attendance and voting records indicate that the applicable absences are related to parental leave.

- Extra staffing support for the Council office during the leave period

The City Council general budget includes funding for staff replacement when Council staff are on leave or away for extended periods. Council should amend the parental leave policy to specify that the staff replacement budget can be used to fund one replacement staff for a Member who is on parental leave to assist with the additional work volumes which may result from the Member's leave. Due to the statutory limitations, this staff person cannot exercise statutory functions of the absent Member.

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SIGNATURE

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