

Bill 53
The Municipal Statutes Amendment Act (2)

Frequently Asked Questions

June 2021

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SUMMARY

Bill 53, *The Municipal Statutes Amendment Act (2)* (hereinafter referred to as the Act) received Royal Assent on May 20, 2021, amending four statutes: *The Municipal Act*, *The Planning Act*, *The Municipal Board Act*, and *The City of Winnipeg Charter*. The amendments modernize the definition of public hearings and notices, and provide procedural fairness for small councils seeking to sanction a member for violating the council code of conduct. The amendments also clarify the definition of “meetings” to include options for remote access, using electronic communication.

PUBLIC HEARINGS, COUNCIL MEETINGS, AND PUBLIC NOTICE

1. What changes were made to the definition of public hearings for municipalities?

The Act modernized the definition of public hearings in *The Municipal Act* to allow for public hearings to be conducted using electronic communication technology.

The changes also allow the public to participate in hearings remotely. The amendments include a provision that ensures public hearings held through alternative means of communication provide a level of public participation equivalent to being physically present at the hearing. Holding these hearings remotely would include public participation through interactive technology and/or through written submissions. Examples of interactive technology that could be used include:

- Microsoft Teams
- GoToMeeting
- Skype
- Conference calls

2. What changes were made to council meeting requirements for municipalities?

No requirements for council meetings were changed. The amendments clarify that municipalities have the option to hold council meetings using electronic communication technology, and that council members may participate in meetings remotely. This will facilitate municipal decision-making by providing additional flexibility for holding council meetings when physical meetings are not possible, as well as allowing council members to be counted as present at a meeting by participating remotely, even if they cannot be physically present.

Council meetings held using remote technology must continue to respect legislative requirements for public access to council meetings, which could include live-streaming or posting a recording online.

3. Do changes to the definition of public hearings extend to hearings at the Municipal Board and planning districts?

Yes. The same flexibilities extend to public hearings at the Municipal Board and planning districts.

4. Do the changes require municipalities, the Municipal Board, and planning districts to hold meetings remotely?

No. The changes are intended to provide flexibility and to facilitate public access to the decision-making process, but do not require the use of electronic communication technology. Individual municipalities and planning districts have discretion to incorporate these communication methods into their public meetings and hearings procedures.

5. How can municipalities and planning districts ensure that meetings and public hearings held remotely are accessible for individuals without broadband internet?

Access to broadband internet is important for real-time access and participation in meetings and hearings held through electronic communication technology. Given these concerns, municipalities should ensure that these meetings remain open and accessible to the public, regardless of internet access.

Amendments include a provision that ensures public hearings held through additional means of communication provide a level of public participation equivalent to being physically present at the hearing. This could include keeping meetings physically open to the public, posting videos on the municipality or planning district's website, a hybrid approach involving both video and in-person and accepting written submissions.

6. Does the public have a say in how these meetings are conducted, and on what platforms?

Yes. Municipalities and planning districts that wish to incorporate electronic communication technology into their meetings must pass a by-law that outlines procedures for holding these types of meetings. The public has the same opportunities to comment on the proposed by-law as they would for any other municipal by-law.

7. How do municipalities communicate with residents about remotely accessing hearings?

Municipalities, planning districts and the Municipal Board must include meeting information in the associated public notice, including the location of meetings held in-person and electronically.

8. What changes were made to public notice requirements for municipalities?

The amendments provided municipalities and planning districts with additional methods to provide public notice of hearings. These changes give municipalities additional flexibility to determine the most appropriate communication options for their circumstances, including:

- Allowing municipalities and planning districts to substitute posting the notice prominently in the online version or website of a newspaper or other publication having general circulation in the municipality for at least 14 days out of the 40 days preceding the hearing.
- Allowing municipalities to post public notice in two public places in the municipality for at least 14 days out of the 40 days preceding the hearing, if there is no local newspaper or other publication with general circulation in the community available.

9. Are municipalities required to only post notices on newspaper websites?

No. Municipalities are not required to post notices electronically. The Act grants municipalities the option to publish notices electronically on a newspaper's website. The Province recognizes that many citizens now access information online, and these changes provide municipalities with the flexibility and fair say to determine the best method of communicating with the public.

The closure of some local newspapers as a result of the COVID-19 pandemic presented challenges to the delivery of public notices. In response, the Province granted municipalities with temporary flexibility to publish notice in alternative formats. In response to positive stakeholder feedback, the Act permanently extended some of the flexibilities to give municipalities more options for connecting with their residents.

10. Do the changes allow a municipality to also choose to publish notices in an online version of a newspaper?

Yes. The amendments maintain the requirement for municipalities and planning districts to post notice of a public hearing in a newspaper having general circulation in the community, but expand this provision to include the online version or website of a local newspaper.

Going forward, a municipality or planning district may choose to post notice in either print or online version of their local newspaper. These changes do not preclude municipalities and planning districts from publishing in both formats, and provide municipalities with ‘fair say’ in determining the best communication methods for their local context.

The legislative requirement to publish notices in local media, local newspapers, either online or print, continues to exist. However, when a local newspaper is not available either in print or online format, the changes also allow flexibility to post public notice in two prominent places in the municipality.

11. Do the changes to public notice requirements extend to planning districts that must also provide public notice and hold public hearings?

Yes. The changes allow planning districts to use the alternative methods for posting public notice.

12. How can municipalities and planning districts prove that notice was provided in situations where there is no local newspaper available?

Legislation does not prescribe how municipalities and planning districts must keep records of issuing public notices.

However, it is recommended that municipalities and planning districts ensure accountability to residents by keeping a record of where, when and how notices were posted, especially when notices are posted in methods other than newsprint. Municipalities and planning districts can decide on how they will keep these records in a fair and reasonable manner. For example, they may choose to keep written records, photo records or, for significant items, use affidavits to confirm notices were posted.

COUNCIL MEMBERS’ CODES OF CONDUCT

13. What changes were made to council members’ codes of conduct requirements?

The amendments changed how many votes are required to approve sanctions under a council members’ codes of conduct for small councils of five or six members. Previously, a resolution to sanction a council member was required to be approved by a majority of council, plus one. The amendments changed this requirement to a simple majority of council for councils with fewer than seven members.

14. Why is this change to the requirement being made?

The “majority plus one” requirement was originally put into place to highlight the seriousness of council members violating their code of conduct. No other provision in *The Municipal Act* requires a majority plus one to affirm a resolution. This is intended to clearly signal that councils should not take decisions regarding violations of their code of conduct lightly.

However, on councils of five or six, one or both parties to a code of conduct complaint must participate in a vote to sanction in order for a resolution to be carried. As both parties to a complaint may reasonably be assumed to have an interest in the outcome of the vote, their participation may impact the fairness of the vote. The same limitations are not present for councils of seven or more.

The following chart outlines the voting requirement for different council sizes:

Council Size	Total Voting Members (if both parties to a complaint recuse themselves)	Majority Vote: Votes Required to Carry a Resolution	Majority +1 Vote: Votes Required to Carry a Resolution
11	9	n/a	7
10	8	n/a	7
9	7	n/a	6
8	6	n/a	6
7	5	n/a	5
6	4*	4	5*
5	3*	3	4*

*If both parties to a complaint on councils of five or six recuse themselves from a vote to sanction in alignment with the legal principle of procedural fairness, council cannot achieve a majority plus one.

These changes strengthen Manitoba’s council members’ codes of conduct legislative framework and provide procedural fairness for all councils. These changes continue to ensure that violations of codes of conduct are treated seriously, and are dealt with fairly throughout the resolution process.

15. Do these changes apply to all municipal councils?

No. The “majority plus one” requirement for approving a resolution to sanction a member remains in place for councils with seven or more members. A simple majority of council may approve a resolution to sanction a member only if there are fewer than seven council members.

16. Does the majority or majority plus one vote requirement apply to situations where a code of conduct complaint only involves one member of a small council, such as a complaint between a council member and a CAO?

The majority vote requirement applies to councils with fewer than seven members in any situation. In the case of a complaint involving one council member and a CAO on a small council of five or six members, a majority vote would be required to pass a resolution to sanction. For example, on a council of six members, four of the remaining five members would be required to vote in favour of the resolution. On a council of five members, three of the remaining four members would be required to approve the resolution.

However, in the case of a complaint involving one council member and a CAO on a council of seven or more members, a majority plus one vote would be required to pass a resolution to sanction. The above chart refers to the voting requirement for a council of seven or more members.

Independent and impartial decision making are the cornerstone of the common law duty of procedural fairness. The proposed change continues to set a high standard, highlighting the seriousness of council members violating their code of conduct. The amendments ensure procedural fairness by enabling both parties to a complaint to recuse themselves from a vote to sanction, regardless of the size of the council.

Disclaimer: Information is provided solely for general information purposes. The original legislation should be consulted for interpreting the law. A copy of the legislation can be found at: <https://web2.gov.mb.ca/bills/42-3/pdf/b053.pdf>.