

# COUNCIL ORIENTATION

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# THE PURPOSE OF MUNICIPAL GOVERNMENT

(Municipal Act, Section 2)

“Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters.”

# SOME STATUTES THAT GOVERN AND EMPOWER THE MUNICIPALITY

- Municipal Act, 2001
- Planning Act
- Municipal Freedom of Information and Protection of Privacy Act
- Development Charges Act
- Environmental Assessment Act
- Environmental Protection Act
- Safe Drinking Water Act
- Employment Standards Act
- Police Services Act
- Fire Protection and Prevention Act
- Ontario Heritage Act
- Accessibility for Ontarians with Disabilities Act

- Drainage Act
  - Assessment Act
  - Building Code Act
  - Expropriations Act
  - Occupational Health and Safety Act
  - Municipal Elections Act
- and all their regulations

# SOME OF THE MUNICIPALITY'S POWERS UNDER THE MUNICIPAL ACT

s. 8 – the powers of the Municipality shall be interpreted broadly to confer broad authority ... to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues

- Regulate or prohibit
- Require persons to do certain things
- Provide a system of licenses
- By-laws may be general or specific and differentiate in any way and on any basis the municipality considers appropriate

# SOME OF THE MUNICIPALITY'S POWERS UNDER THE MUNICIPAL ACT

s. 9 – municipalities have the capacity, rights, powers and privileges of a natural person

- Enter contracts
- Purchase and sell land
- Hire and fire employees
- Delegate administrative responsibility

No longer a “list” of permitted powers

# UPPER/LOWER TIER GOVERNMENTS

- s. 11 – upper and lower tier governments may provide any service or thing considered necessary or desirable, subject only to the spheres of powers assigned to upper and lower tier government – some are exclusive some are shared
- Highways/transportation
  - Waste management
  - Public utilities
  - Economic development/licensing
  - Culture, parks, recreation and heritage

# UPPER TIER GOVERNMENTS

The division of authority between the upper and lower tier government is unique to each county. Upper tier governments may deal with any of the following (not an exclusive list):

- Highways/transportation
- Waste management
- Public utilities
- Homes for the aged
- Social services
- Economic development



# LOWER TIER GOVERNMENTS

Lower tier governments may deal with any of the following (not an exclusive list):

- Property Tax Billing and Collection
- Roads and Sidewalks
- Parks and Recreational Facilities
- Garbage Collection and Disposal
- Parking and Animal Control
- Building Inspection, Line Fences and Property Standards
- Grants and Financial Assistance
- Business Licensing and Regulation

# HOW A MUNICIPALITY EXERCISES ITS POWERS

## BY BY-LAWS

Section 5 of the Municipal Act

“A municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise.”

# BY RESOLUTIONS

May be used:

- To approve administrative decisions
- When specifically permitted by law

# BY FOLLOWING PROCEDURES

- Council's Procedural By-law
- Some decisions require notice to the public before the decision
- Some decisions require notice to the public after the decision
- Some decisions require public meetings before the decision

# THE PUBLIC'S RIGHT TO CHALLENGE MUNICIPAL LAWS AND DECISIONS

- Some decisions can be appealed to the courts
  - If Council exceeds its legal authority, the decision can be quashed
- Some decisions can be appealed to the Ontario Municipal Board or other tribunals
  - If the statute provides a right of appeal to the OMB etc., the decision can be changed
- Some decisions cannot be appealed
  - Generally, decisions involving the discretionary exercise of a policy made in good faith (Municipal Act, s 450)

# SOME REMEDIES AVAILABLE TO THE MUNICIPALITY TO ENFORCE ITS LAWS

(Note: Not all apply in every situation)

- Orders to Comply
- Work Orders
- Remedial Action
- Adding Costs to Property Tax Rolls
- Shutting Off Utilities
- Selling Property for Tax Arrears
- Prosecution – Fines and Court Orders
- Civil Action – Judgments and Court Orders

# EVERYONE'S ROLE IN MUNICIPAL GOVERNMENT

## ROLE OF COUNCIL

(Municipal Act, section 224)

- Represent the public
- Consider the well-being and interests of the municipality
- Develop and evaluate the municipality's policies and programs
- Determine which services the municipality will provide
- Ensure that administrative practices and procedures are in place to implement council's decisions
- Maintain the financial integrity of the municipality
- Carry out the duties of council under the Municipal Act or any other Act



# ROLE OF THE MAYOR

(Municipal Act, section 225 and 226.1)

- Act as chief executive officer of the municipality
- Uphold and promote the purposes of the municipality
- Preside over council meetings
- Provide leadership to the council
- Promote public involvement in the municipality's activities
- Foster activities that enhance economic, social and environmental well-being of the municipality and its residents
- Represent the municipality at official functions
- Promote and represent the municipality locally, nationally and internationally
- Carry out the duties of the head of council under the Municipal Act or any other Act



# ROLE OF ADMINISTRATION

(Municipal Act, section 227)

- Implement council's decisions
- Establish administrative practices and procedures to carry out council's decisions
- Undertake research and provide advice to council on the municipality's policies and programs
- Carry out other duties required under the *Municipal Act* or any Act
- Carry out other duties assigned by the municipality



# ROLE OF THE CHIEF ADMINISTRATIVE OFFICER

(Municipal Act, section 229)

- Exercise general control and management of the affairs of the municipality
- Ensure the efficient and effective operation of the municipality
- Performing such other duties as are assigned by Council

# ROLE OF THE CLERK

(Municipal Act, section 228)

- Record, without note or comment, all resolutions, decisions and other proceedings of council
- If required by any member present at a vote, record the name and vote of every member voting on any matter or question
- Keep the originals or copies of all by-laws and minutes of the Council proceedings
- Perform the other duties required under the Municipal Act or under any other Act
- Perform such other duties as are assigned by the municipality

# ROLE OF CHIEF BUILDING OFFICIAL

(Building Code Act, section 1.1(6))

- Establish operational policies for the enforcement of the Building Code Act and the building code
- Co-ordinate and oversee the enforcement of the Building Code Act and the building code
- Exercise powers and perform the other duties assigned under the Building Code Act and the building code
- Exercise powers and perform duties in accordance with the standards established by the applicable code of conduct

# LIABILITY FOR COUNCIL ACTION

- The municipality can be sued like any person
- s. 450 creates a defence where the act complained of is a result of a policy decision
  - Policy is developed to reflect budget and resource and governance restraints
  - Operational decisions implement policy – no immunity
- The municipality has obligations under many statutes that are not subject to discretion
  - Example – Building Code enforcement
    - Failure to enforce exposes the municipality to liability
    - It is outside Council's role to make decisions under the Building Code Act

# LIABILITY FOR COUNCIL ACTION

## Safe Drinking Water Act

- 19.** (1) Each of the persons listed in subsection (2) shall,
  - (a) exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation; and
  - (b) act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system.
- (2) The following are the persons listed for the purposes of subsection (1):
  - ...
  - 3. If the system is owned by a municipality, every person who, on behalf of the municipality, oversees the accredited operating authority of the system or exercises decision-making authority over the system.
- Max fines for corporations \$100,000. Max of \$6,000,000 if the offence results in a health risk - for a first offence and \$200,000 and \$10,000,000 for a subsequent offence
- Max fines for individuals \$20,000. Max of \$4,000,000 if the offence results in a health risk - for a first offence and \$50,000 and \$7,000,000 for a subsequent offence
- Max prison sentence for individuals is 1 year – up to 5 years if the offence results in a health risk

# LIABILITY FOR COUNCIL ACTION

- 45. (1) - No proceedings against a member of council for damages based on the default of the municipality in keeping a highway or bridge in a reasonable state of repair
- S. 448. (1) - No personal liability for members of Council for any act done in good faith in the performance of a duty or authority under the Municipal Act or a by-law
- S. 448(2) - Municipality can be liable for negligence of member of council in performance of council duty.

# COUNCIL MEETINGS

- Every Council must have a Procedural by-law governing its meetings (Municipal Act, s. 238)
- Meetings are to be conducted in accordance with the Procedural By-law
- No secret ballots (except to elect Warden or appoint meeting chair)
- May have recorded votes
- What constitutes a meeting
  - Quorum
  - Discussion that materially advances the business of Council

# CLOSED (IN CAMERA) MEETINGS

- All meetings must be open to the public, unless otherwise permitted by law
- Proper resolution needed for closed meeting
  - Matters related to the security of the municipality's property
  - Personal matters about an identifiable individual, including municipal employees
  - A proposed or pending acquisition/disposition of land
  - Labour relations or employee negotiations
  - Litigation or potential litigation, including matters before the Ontario Municipal Board and other administrative tribunals



- Receiving advice or reviewing communication that is solicitor/client privileged
- To consider a request under the *Municipal Freedom of Information and Protection of Privacy Act* when Council is designated as head of the institution for purposes of that Act
- To educate or train Council as long as there is no discussion about or dealing with matters that materially advance the business or decision-making of the council
- Any matter in respect of which the Council or Committee is authorized by another statute to meet in-camera

# MAKING DECISIONS IN CLOSED MEETINGS

Must relate only to matters that can be discussed in closed meeting

AND

Must be procedural only or to give directions or instructions to officers, employees or agents of the municipality

- Examples:
  - Vote whether to report a matter out in public session and vote on it
  - Vote to amend resolution to be debated and voted on in public session
  - Vote to instruct staff to make inquiries and report back
  - Open session vote cannot be “rubber stamp” of decision made in-camera

# POTENTIAL CONSEQUENCES OF HOLDING AN IMPROPER CLOSED MEETING

Any person may request an investigation

- Investigation conducted by investigator appointed by municipality
- If no investigator appointed, by Ontario Ombudsman
- Report published
- Court declare decision invalid
  - Decision is of no force or effect
  - Can invalidate a by-law passed in open session
  - Can lead to court challenges

# ACCOUNTABILITY AND TRANSPARENCY

## POLICIES AND PROCEDURES

(Municipal Act, Section 270)

A municipality shall adopt and maintain policies for:

1. Its sale and other disposition of land.
2. Its hiring of employees.
3. Its procurement of goods and services.
4. The circumstances, form, manner and time of giving notice to the public.
5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions
6. The manner in which the municipality will try to ensure that its actions are transparent to the public.
7. The delegation of its powers and duties.



# DECORUM AND CONDUCT

Council Meetings:	Procedural Bylaw (s. 238)
Councillor Conduct:	Code of Conduct (s. 223.1)
Workplace Violence and Harassment:	OH&S Act (Bill 168)

# MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

## GENERAL RULE (Section 4)

“Every person has a right of access to a record or a part of a record in the custody or under the control of [the municipality] unless,

- (a) the record or the part of the record falls within one of the exemptions under sections 6 to 15; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.”

# EXCEPTIONS UNDER THE MFIPPA

(Note: There are many exceptions to the exceptions)

- Draft by-laws and other matters that may be considered in-camera
- Advice or recommendations of an officer or employee or consultant retained by the municipality
- Records related to law enforcement or other matters under investigation
- Information received in confidence from the Government of Canada, the Government of Ontario and other similar public entities and organizations

- A record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence by a third party if the release of such information could significantly prejudice that person's competitive position or interfere with their contractual rights or result in similar information not being provided to the municipality in future
- Records that contain economic and other information affecting the municipality if to release such information could be injurious to the municipality's position
- Records that are subject to solicitor/client privilege
- Records that could reasonably be expected to seriously threaten the safety or health of an individual
- Records that disclose personal information



# DEALING WITH REQUESTS UNDER MFIPPA

- Assess whether the requested record must be disclosed
- Assess whether request is frivolous or vexatious
- Assess potential cost and obtain deposit
- Make decision
- Decision can be appealed to the Privacy Commissioner

# ROLE OF INDIVIDUAL COUNCILLORS UNDER MFIPPA

- Individual councillors have no greater right of access than the public
- Act permits disclosure to municipal officers or employees if:
  - information is needed to perform their duties and
  - the disclosure is necessary and proper for the functioning of the municipality

# MUNICIPAL CONFLICT OF INTEREST ACT

- Governs individual councillors, not the municipality
- Duty of each councillor to comply with the Act
- Applies when acting as councillor or member of committee or local board
- Failure to comply can result in the following
  - Council seat declared vacant
  - Councillor disqualified from holding office for up to 7 years
  - Councillor required to make restitution to any person suffering loss or the municipality

# WHAT IS A CONFLICT OF INTEREST?

- Any pecuniary interest, direct or indirect, in any matter under consideration by council, committee or local board
  - Any financial or monetary interest
  - The pecuniary interest can be positive or negative
- A pecuniary interest of the following persons is an indirect interest
  - Councillor's parent, spouse, same sex partner or natural, adopted or step-child
  - Councillor's employer or business partner
  - A private corporation in which the councillor is a shareholder, director or senior officer
  - A public corporation in which the councillor has a controlling interest



# A COUNCILLOR'S OBLIGATIONS

- Disclose the nature of your interest prior to any consideration of the matter at the meeting
- Not take part in the discussion or vote on the matter
- Not attempt in any way before, during or after the meeting to influence the voting
- If in closed meeting, immediately leave the room during the discussion
- If absent from the meeting, declare the conflict at the next meeting

# EXCEPTIONS TO CONFLICT OF INTEREST

- Having a pecuniary interest in common with electors generally (e.g; property owner, utility customer)
- Receiving an allowance, honorarium, remuneration, salary or benefit as a member of council or as a member of the volunteer fire department
- Having a pecuniary interest that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor

# THE LAND USE PLANNING PROCESS

- Planning Act – establishes the procedures for managing and approving land use
- Provincial Policy Statement – establishes province wide policies that govern all development in the municipality
- Official Plan – sets policies that guide long term development in the municipality
- Zoning By-law – establishes regulatory controls on the development of land
- Site Plan Control – specified developments require site-specific plans to control how development proceeds

# COUNCIL'S ROLE IN THE PLANNING PROCESS

- Council's decisions must:
  - Be made in accordance with the requirements of the Planning Act
  - Be consistent with the Provincial Policy Statement
  - Conform to the policies of the Official Plan
  - Comply with the applicable criteria set out in the Planning Act
  - Be based on principles of good land use planning
  - Be based on a procedure that is fair, open, accessible, timely and efficient
- Council has the authority to:
  - Amend its Official Plan/ subject to MMAH approval (County approval)
  - Approve subdivisions (County)
  - Amend zoning (Township)



# THE ROLE OF THE OMB

- To hear appeals from land use planning decisions of Council or its Committee of Adjustments
- To approve, modify or over-rule council's decision
- To make determinations under the Expropriations Act

# HOW TO AVOID UNNECESSARY OMB HEARINGS

- Understand its role in the planning process
  - Make decisions consistent with the Provincial Policy Statement
  - Make decisions that conform with the Official Plan
- Understand and apply the requirements of the Planning Act
- Understand the difference between planning decisions and policy decisions
  - Policy guides planning, planning does not make policy
- Heed the advice or comments of the municipal planner and those external agencies that provide comments
- Get a second opinion if Council has concerns about the advice it is receiving

# PROFILE

Tony Fleming is a Partner in the Land Use Planning, Development and Environmental Group and the Municipal Group at Cunningham Swan. Tony is recognized by the Law Society of Upper Canada as a Certified Specialist in Municipal Law (Local Government/ Land Use Planning and Development). As a Certified Specialist, Tony has demonstrated expertise in the fields of municipal law and land use planning and development law.

Tony provides advice to municipalities and private sector companies on all aspects of land use planning and development as well as environmental law. Our municipal clients consult Tony on all aspects of municipal governance and complex land use planning matters. Tony appears frequently before the Ontario Municipal Board to defend decisions of municipal Councils and Committees of Adjustment. Tony also appears regularly before the Assessment Review Board and the Environmental Review Tribunal. In addition, Tony appears in all levels of Ontario Courts on administrative law matters, including defending challenges to municipal by-laws.

Prior to joining Cunningham Swan, Tony was Senior Legal Counsel with the City of Kingston. Tony focused on providing advice on land use planning and development and environmental law with the City of Kingston, building on his experience in private law firms in Toronto where Tony practised as a land use planning and environmental lawyer.

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