

TOWN OF THE BLUE MOUNTAINS COUNCIL ORIENTATION 2018

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TOPICS

1. **LEGISLATION:** You are a “creature of statute”.
2. **ROLES AND PROCEDURES:** The recipe for successful government.
3. **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY:** A balancing act - access v. privacy.
4. **CONFLICTS OF INTEREST:** Your Achilles Heel.
5. **INDEMNIFICATION BY-LAW:** If something goes wrong.

LEGISLATION

Municipal Act, 2001

Municipal Elections Act, 1996

Municipal Conflict of Interest Act

*Municipal Freedom of Information and Protection of
Privacy Act*

THE ROLE OF COUNCIL

It is the role of Council to:

1. Represent the public and to consider the well-being and interests of the Town;
2. Develop and evaluate the policies and programs of the Town;
3. Determine which services the Town provides;
4. Ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement decisions of Council;

THE ROLE OF COUNCIL

5. Ensure the accountability and transparency of the operations of the Town;
6. Maintain the financial integrity of the Town; and
7. Carry out the duties of Council under the Municipal Act or any other Act

ROLE OF HEAD OF COUNCIL (MAYOR)

It is the role of the Head of Council to:

1. Act as the Chief Executive Officer of the Town;
2. Preside over Council meetings, so that its business can be carried out efficiently and effectively;
3. Provide leadership to the Council;
4. Represent the Town at official functions; and
5. Provide information/recommendations to Council with respect to the role of council respecting accountability and transparency and the administrative policies, practices and procedures in place to implement the decisions of Council.

ROLE OF MAYOR (CEO)

As Chief Executive Officer, it is the role of the Mayor to:

1. Uphold and promote the purposes of the Town;
2. Promote public involvement in the Town's activities;
3. Act as the representative of the Town and promote it locally, nationally and internationally; and
4. Participate in and foster activities that enhance the economic, social and environmental well-being of the Town and its residents.

ROLE OF CHIEF ADMINISTRATIVE OFFICER (CAO)

A municipality may appoint a chief administrative officer who shall be responsible for:

1. Exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
2. Performing such other duties as are assigned by the municipality.

Said to be Council's only employee.

ROLE OF CLERK

A municipality shall appoint a clerk whose duty it is:

1. To record, without note or comment, all resolutions, decisions and other proceedings of council;
2. If required by any member present at a vote, to record the name and vote of every member voting on any matter or question;
3. To keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;
4. To perform the other duties required under the Act or under any other Act; and
5. To perform such other duties as are assigned by the municipality.

ROLE OF STAFF

It is the role of the officers and employees of the municipality to:

1. To implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
2. To undertake research and provide advice to council on the policies and programs of the municipality; and
3. To carry out other duties required under this or any Act and other duties assigned by the municipality.

ROLE OF A COUNCILLOR

Ontario's Municipal Councillor's Guide says Councillor's have three main roles: a representative; a policy-maker; and a steward.

However, the Act contains no specific job description or authority for members of Council.

Councillors are public officials, with no management powers.

MEETINGS - GENERALLY

“Meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

(a) a quorum of members is present, and

(b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

“Quorum” - A majority of the members of a municipal council is necessary to form a quorum.

MEETINGS – OPEN AND CLOSED

All meetings shall be open to the public, except that a meeting or part of a meeting may be closed to the public if the subject matter being considered is:

- (a) the **security of the property** of the municipality or local board;
- (b) **personal matters** about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending **acquisition or disposition of land** by the municipality or local board;
- (d) **labour relations or employee negotiations**;
- (e) **litigation or potential litigation**, including matters before administrative tribunals, affecting the municipality or local board;

MEETINGS – OPEN AND CLOSED

- (f) advice that is subject to **solicitor-client privilege**;
- (g) a matter in which a closed meeting may be held under another Act;
- (h) information explicitly **supplied in confidence** by Canada, a province or territory or a Crown agency;
- (i) a **trade secret, etc., supplied in confidence** to the municipality;
- (j) a trade secret, etc., that belongs to the municipality and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any **negotiations** carried on or to be carried on by or on behalf of the municipality.

MEETINGS – MATERIALS FROM CLOSED SESSIONS

It is a convention and best practice that all materials distributed in closed session should not leave the room, but will be collected by the Clerk.

This is a necessary precaution to preserve the sanctity of the closed session discussions.

In extreme cases can be considered a criminal offence.

Breach of trust by public officer

122 Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

PROCEDURE BY-LAW 2018-20

The Act requires that every municipality shall pass a procedure by-law for governing the calling, place and proceedings of meetings.

The Town's By-law provides that:

1. The by-law governs the proceedings of Council, Committees and Local Boards, but any part may be suspended if agreed upon by a majority of the Members present (unless prescribed by law).
2. All votes open to the public, except votes in closed session if for a procedural matter or for giving directions or instructions to staff.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (“MFIPPA”)

Every person has a right of access to a record or part of a record in the custody or under the control of an institution unless,

- (a) The record or 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.

The head of an institution must ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records.

MFIPPA - EXEMPTIONS

A head may refuse to disclose a record if disclosure would reveal:

1. a draft of a by-law or the substance of deliberations of a meeting in the absence of the public;
2. advice or recommendations from staff;
3. a law enforcement matter or an investigation etc.;
4. information received in confidence from another government;
5. a trade secret, etc., supplied in confidence from a third party;
6. trade secrets, etc., that belong to the institution and has a monetary value;
7. advice subject to solicitor-client privilege; or
8. personal information.

Exemptions don't apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

MFIPPA - APPEALS

A person may appeal any decision of a head to the Information and Privacy Commissioner.

Commissioner may conduct an inquiry to review the head's decision.

It is an offence to wilfully disclose personal information, wilfully maintain a personal information bank, make a false request for personal information, wilfully obstruct, or make a false statement to, or fail to comply with an order of the Commissioner.

On conviction person is liable to a fine not exceeding \$5,000

MUNICIPAL CONFLICT OF INTEREST ACT (“MCIA”)

Section 5 (1): Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- Shall disclose the interest and the general nature thereof
- Shall not take part in the discussion of or vote on any question in respect of the matter
- Shall not attempt in any way whether before, during or after the meeting to influence the voting

MCIA - “Indirect” Pecuniary Interests

Member has an indirect pecuniary interest if:

1. The Member is a shareholder, director or senior officer of a corporation that does not offer its securities to the public;
2. The Member has a controlling interest in or is a director or senior officer of a corporation that offers its securities to the public;
3. The Member is a member of a body that has a pecuniary interest in the matter; or
4. The Member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

MCIA - “Deemed” Pecuniary Interests

- The pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall be deemed to be also the pecuniary interest of the Member.
- Note: siblings not included in the list

MCIA - EXCEPTIONS

- Section 5 rules do not apply to certain pecuniary interests, including:
 - In respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member maybe entitled
 - By reason of the member having a pecuniary interest which is an interest in common with electors generally
 - By reason of an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member

MCIA – APPLICATION TO A JUDGE

An elector, an Integrity Commissioner, or a person demonstrably acting in the public interest may apply to a judge for a determination of whether a member (or former member while a member) has contravened section 5, 5.1 or 5.2

If judge determines that the member contravened section 5, 5.1 or 5.2, the judge may:

- Reprimand the member
- Suspend the remuneration paid to the member up to 90 days
- Declare the member's seat vacant
- Disqualify the member from being a member for not more than seven years
- Require the member to make restitution to the party suffering the loss

MCIA - JUDICIAL CONSIDERATIONS

Judge may consider, among other matters, whether the member of former member:

1. Took reasonable measures to prevent the contravention
2. Disclosed the pecuniary interest to an Integrity Commissioner in a request for advice and acted in accordance with the advice
3. Committed the contravention through inadvertence or by reason of an error in judgment made in good faith

INDEMNIFICATION BY-LAW NO. 2016-35

Applies to members or former members, employees or former employees (“Individuals”).

The Town shall indemnify Individuals in respect of any civil, criminal or administrative action or proceeding, including appeals, by a third party for acts or omissions arising out of the scope of the Individual’s authority or within the course of the individual’s employment or office if:

1. The Individual acted honestly and in good faith with a view to the best interests of the Town; and
2. In the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Individual had reasonable grounds for believing that his or her conduct was lawful.

INDEMNIFICATION BY-LAW NO. 2016-35

Town shall indemnify by:

1. Assuming the cost of defending the Individual;
2. Paying any damages or costs awarded against the Individual;
3. Paying any expenses reasonably incurred by the Individual; and
4. Paying any sum required in connection with the settlement of any action or proceedings.

An Individual involved in any action or proceeding shall co-operate fully with the Town and any lawyer retained by the Town.

QUESTIONS and THANK YOU