

Municipal Council Orientation

**Ministry of Municipal Affairs and Housing
Municipal Services Office – North (Sudbury)**

Date: February 9th, 2024

Location: Calvin Township

Disclaimer

- These slides are provided by the Ministry of Municipal Affairs and Housing for convenience only.
- The slides should not be relied on for legal or official purposes and are not meant to replace provincial legislation.
- As local facts and circumstances are variable, users may wish to consider obtaining their own legal advice when particular legal issues arise.
- For more specific information, please refer to the relevant legislation and regulations which can be found online at: www.ontario.ca/laws

Minister of Municipal Affairs and Housing

The Honourable Paul Calandra

MPP for Markham—Stouffville



Ontario Municipal Councillor's Guide

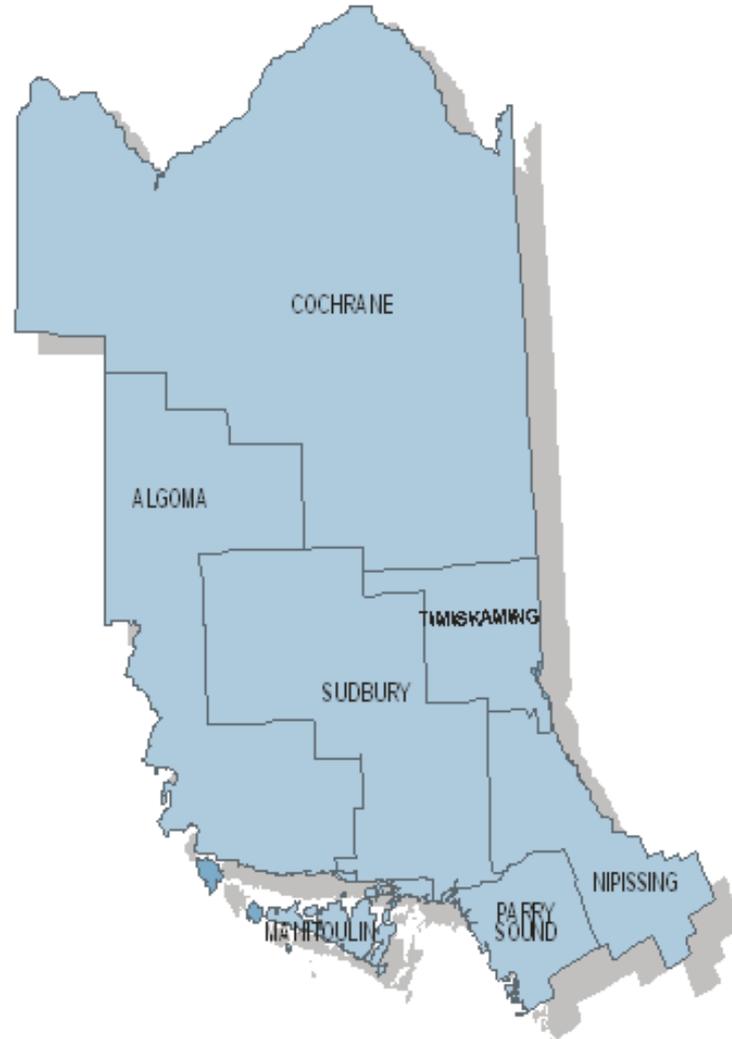
- This presentation is based on information contained in the [Ontario Municipal Councillor's Guide](#)
- The guide is intended to give a summary of complex matters
 - Includes references to specific sections of legislation
 - Refers to or reflects laws and practices that are subject to change
 - Is not a substitute for legal or professional advice

Ministry Legislation

- MMAH administers approximately 50 statutes including:
 - Municipal Act, 2001
 - Planning Act
 - Housing Services Act, 2011
 - Building Code Act, 1992
 - Residential Tenancies Act, 2006
 - Municipal Elections Act, 1996
 - Municipal Conflict of Interest Act

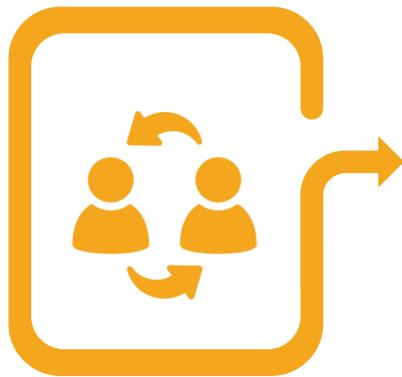
Municipal Services Office – North Sudbury

110 Single Tier
Municipalities



Municipal Services Office: Our Role

- Your primary point of contact with the Ministry



Provide information and facilitate connections regarding government initiatives



Identify and disseminate best practices



Partner with municipalities and others for common goals



Build effective relationships

Outline of the Presentation

1. Role of Council, Councillor and Staff
2. Accountability and Transparency
3. Meetings
4. Municipal Government
5. Municipal Organization
6. Changes to Council Composition
7. Council as Lawmakers
8. Exercising Municipal Powers
9. The Fiscal Context



Section 1:

Role of Council, Councillor and Staff

Council and Staff Roles

Council

Represent the public and to consider the well-being and interests of the municipality



Councillor

Play several roles including representative, policymaking and stewardship role in the municipality



Head of Council

Act as the chief executive officer of the municipality and provide leadership to council



CAO and Staff

Implement council's decisions and establish administrative practices and procedures

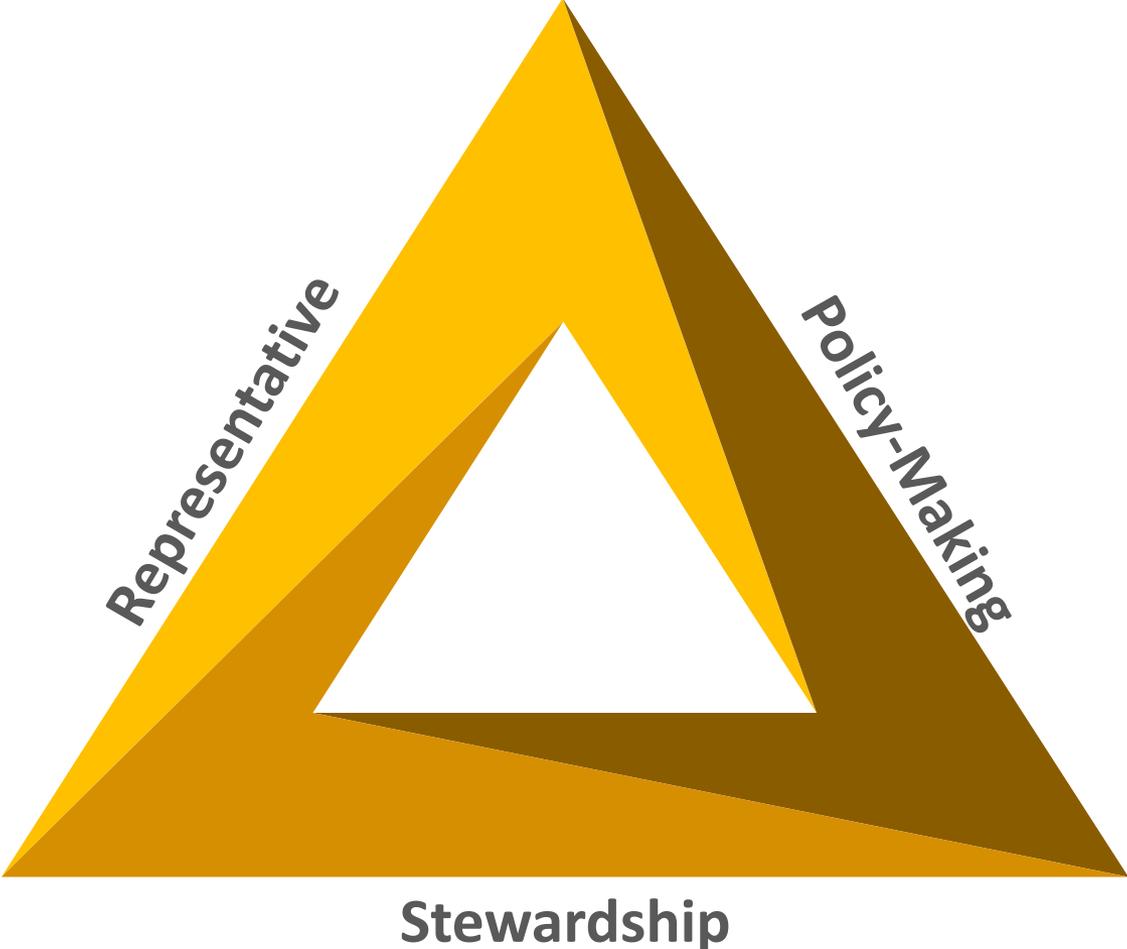
Council and Staff Roles: Council

- The *Municipal Act, 2001*, sets out the role of council as follows:
 - represent the public and to consider the well-being and interests of the municipality
 - develop and evaluate the policies and programs of the municipality
 - determine which services the municipality provides
 - ensure that both administrative and controllership policies, practices and procedures are in place to implement the decisions of council
 - ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality
 - maintain the financial integrity of the municipality
 - carry out the duties of council under the *Municipal Act, 2001* or any other Act

Council and Staff Roles: Head of Council

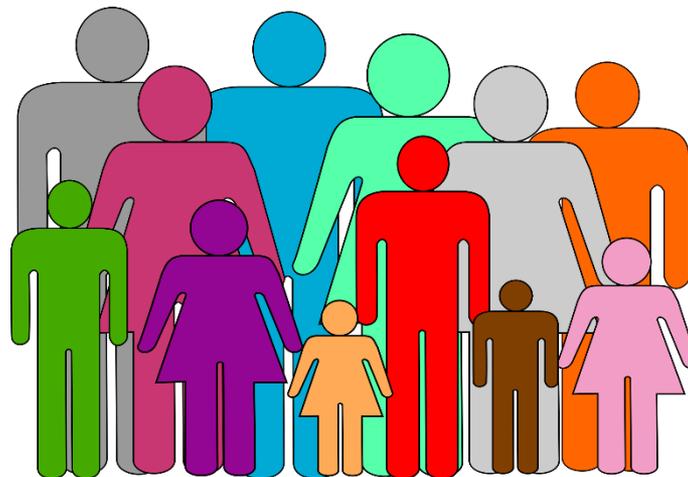
- The *Municipal Act, 2001*, sets out the role of the head of council as follows:
 - provide leadership to the council
 - preside over council meetings so that its business can be carried out efficiently and effectively
 - provide information and recommendations to the council with respect to the role of council
 - represent the municipality at official functions
 - carry out duties of the head of council under the *Municipal Act, 2001* or any other Act
 - act as the chief executive officer

Council and Staff Roles: Councillor



Councillor - Representative Role

- Elected by your constituents to represent their views
 - many views/opinions
 - cannot represent all of them all of the time
- Election to office requires a broad understanding of the issues and you may need to consider:
 - opposing interests
 - making decisions that may not be popular with everyone
- You should make decisions in the best interests of the municipality as a whole



Councillor - Policy-Making Role

- Policies provide direction for municipal operations by establishing general principles to help guide actions



Councillor - Stewardship Role

- Council's objectives are to ensure financial and administrative resources are used efficiently
 - council monitors implementation of approved policies and programs
 - practical aspects of implementation and administration with staff
- Council may wish to develop processes to help ensure:
 - policies adopted by council are being implemented
 - staff are administering services and programs as council intended
 - rules and regulations are being applied correctly and consistently
 - funds are being spent only as authorized, and the municipality's resources (financial and otherwise) are being used appropriately and as efficiently as possible

Councillor - Stewardship Role (continued)

- Council monitors and measures the municipality's administrative effectiveness and efficiency
- Working with staff, council can determine if policies are functioning well or if changes are necessary. To do this, council may wish to:
 - define corporate objectives and set goals and priorities
 - establish clear administrative practices
 - provide specific guidelines and directions to staff on the applications of those policies
 - delegate appropriate responsibilities to staff (subject to legal authority)
 - establish a personnel management policy
 - ensure that policies with respect to most operations of the municipality are in place
 - develop communication protocols
 - consider establishing a protocol for working with other local governments and Indigenous communities that share a common interest in community health, culture and economy. Relationship-building early with Indigenous communities is the key to effective partnerships down the road.

Council and Staff Roles: CAO

- The *Municipal Act, 2001*, sets out the role of the chief administrative officer (CAO) of the municipality as follows:
- The CAO is responsible for:
 - 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
 - performing such other duties as are assigned by the municipality.
- The CAO is responsible for the general management of the day-to-day operations of the municipality, which may include developing and implementing appropriate internal administrative policies, practices and procedures.

Council and Staff Roles: Officers

- The *Municipal Act, 2001* sets out the role of the officers and employees of the municipality as follows:
 - implement council's decisions and establish administrative practices and procedures to carry out council's decisions
 - undertake research and provide advice to council on the policies and programs of the municipality
 - carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the municipality
- Some officers of the municipality have statutory obligations

Clerk

Treasurer

Chief
Building
Official

Fire Chief

Council - Staff Relationship and Roles

- All municipalities should recognize the importance of council-staff relations
- Some councils have established programs that require employee input into operational policies and procedures
- This practice recognizes staff experience and expertise and encourages communication

Council

- Representative
- Direction & Policy
- Decisions
- Political Leadership



Staff

- Manage people & resources
- Research & Advice
- Implementation
- Organizational Leadership

CAO

- Manage people & resources
- Organizational Leadership

Strategic Planning

- Strategic planning:
 - is a process an organization uses to define a strategy or direction, and make decisions about allocating its resources (financial and staff resources)
 - helps council develop strategies, goals, objectives and action plans to achieve the future it desires
 - is forward-thinking and proactive
 - can be a guide to decision-making, project planning and budgeting
- Identify the current state of the community through a SWOT analysis



- Once adopted, the success of the plan should be measured and reviewed periodically

Succession Planning

- Succession planning is an important part of the talent management process
- Process of identifying an organization's current and long-term staffing needs and developing internal talent to help meet those needs.
- Allows a municipality to predict where critical staffing requirements will be and reduce organizational risks
- Provides time to adjust programs, training and recruitment to meet staffing requirements as efficiently and effectively as possible
- Can offer challenging and rewarding career possibilities and can empower and engage employees
- May contribute to fewer financial resources being spent in recruitment and development of new employees
- It should be linked to the municipality's strategic plan and be consistent with organizational objectives.



Section 2:

Accountability and Transparency

Adoption of Policies

- The *Municipal Act, 2001* requires municipalities to have policies related to:
 - sale and other disposition of land
 - hiring of employees
 - the relationship between council and municipal officers and employees
 - procurement of goods and services
 - the circumstances in which the municipality shall provide notice to the public and, the form, manner and times notice shall be given
 - accountability and transparency
 - delegation of its powers and duties
 - protection of the tree canopy and natural vegetation in the municipality
 - pregnancy leaves and parental leaves of members of council



Codes of Conduct and other Ethical Rules

- Municipalities are required to adopt a code of conduct for members of council and certain local boards.
 - Mandatory subject matters that must be included: gifts, benefits and hospitality; respectful conduct; dealing with confidential information; and use of municipal or local board property/equipment.
- Considerations when developing and reviewing codes of conduct:
 - working with local boards when developing local board codes of conduct,
 - reviewing and updating existing codes of conduct, including consulting with the Integrity Commissioner,
 - establishing standards of respectful conduct – consider what harassment or bullying is,
 - establishing a local process for handling complaints about a councillor’s conduct,
 - work with the Integrity Commissioner to establish an accessible and open complaints process for codes of conduct,
 - review how the code fits with the other aspects of the local accountability regime (e.g., an existing council-staff relations policy).

Providing Access to an Integrity Commissioner

- Municipalities are required to provide access to an integrity commissioner to, in an independent manner, perform the functions assigned by council with respect to:
 - applying the local codes of conduct for members of council and certain local boards
 - applying local procedures, rules, and policies governing the ethical behavior of members
 - applying certain Municipal Conflict of Interest Act (MCIA) rules to members
 - requests for advice from members of council and certain local boards respecting their obligations under:
 - the local code of conduct applicable to the member
 - local procedures, rules or policies governing the ethical behavior of the members
 - certain sections of the *Municipal Conflict of Interest Act*
 - providing educational information to the public, the municipality and members of council and certain local boards about local codes of conduct for members and about the MCIA

Accountability Officers

- To help ensure support integrity and accountability in public office, the Municipal Act, 2001 allows municipalities to pass by-laws to appoint:



**A municipal
Ombudsman**



**An Auditor
General**



**A lobbyist registry
and registrar**



**A closed meeting
investigator**

Municipal Conflict of Interest Matters



The Municipal Conflict of Interest Act

- Sets out some of the ethical rules for council and local board members
- These rules apply, with some exceptions, to council and local board members if they have a pecuniary (financial) interest in a matter that is before a council (or a local board) at a meeting

Municipal Conflict of Interest Matters (continued)

- The legislation requires a member with this kind of interest – again with certain exceptions – to, among other things:



- **disclose the interest** and its general nature before the matter is considered at the meeting
- **not take part** in the discussion or voting on any question in respect of the matter
- **not attempt to influence** the voting before, during, or after the meeting; and
- **immediately leave** the meeting, if the meeting is closed to the public

Municipal Conflict of Interest Act (Continued)

- The *Municipal Conflict of Interest Act*:
 - Generally, prohibits members of council or of a local board from using their office to attempt to influence decisions or recommendations being considered by municipal or local board employees if the member has a pecuniary interest in the matter
 - Requires a member who discloses a pecuniary interest at a meeting to file a written statement of their interest
 - Requires municipalities and local boards to establish and maintain a registry of statements and declarations of interests of members; must be available to the public
 - Includes a broader range of penalties for contraventions
 - Reprimand
 - Suspension of pay for a period of up to 90 days
 - Restitution
 - Removal from office and disqualification from being a member of council for up to seven years
 - The courts decide whether a contravention of the Act has taken place

Municipal Conflict of Interest (Continued)

- The *Municipal Act, 2001*, provides integrity commissioners with responsibility to investigate a complaint concerning an alleged contravention of the MCI rules
- After completing an investigation, the Integrity Commissioner could decide to apply to a judge for a determination as to whether the member contravened the MCI
 - If an Integrity Commissioner decides not to apply to a judge, the person who made the complaint may still do so (as long as certain conditions are met)

Codes of Conduct for other Municipal Officials

- Other statutes may require specific or general codes of conduct relevant to municipal council.
- The *Building Code Act* requires municipalities to establish and enforce a code of conduct for the chief building official and inspectors.
 - A code of conduct must include policies or guidelines to be used when responding to allegations of a breach and corresponding disciplinary actions that may be taken.
 - Municipalities must ensure that the public is aware of the code of conduct.

Ontario Ombudsman



The Ontario Ombudsman has a role with respect to municipalities.

- May investigate municipalities on complaint or on own initiative
- Cannot compel municipalities to take action
- May make recommendations to council and the municipality as part of their report
- Municipality determines whether and how to address any recommendations made by Ombudsman
- Ontario Ombudsman does not replace locally established complaint mechanisms or act as Integrity Commissioner for municipalities

Privacy and Confidentiality

- The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) is the primary statute for privacy and confidentiality
 - Sets out rules for collection, use and disclosure of personal information
 - Regulates confidential information of other kinds (in addition to personal information)
- Other statutes and laws including local by-laws also regulate personal and other kinds of confidential information
- Councillors may have responsibilities if receiving confidential information in the course of their duties (e.g. protecting and safeguarding the information)
 - Check with municipal staff about appropriate measures and the municipality's practices (e.g. providing for physical security)

Section 3: Meetings

Procedure By-law

- Every municipality and certain local boards must pass a procedure by-law to govern the calling, place and proceedings of meetings



- The procedure by-law sets out how meetings are to be conducted
- The by-law's contents are generally up to the municipality
- The by-law may be considered a transparency and accountability tool
- Regular review of the by-law helps ensure it effectively facilitates decision making
- The by-law must provide for public notice of meetings.

Definition of a Meeting

- The Municipal Act includes a definition of meeting for the purposes of meetings and procedures rules:
 - 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
 - (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

The Municipal Act meetings rules apply to councils, and to certain committees and local boards. Some local bodies (e.g. police services boards) have meetings rules that differ from these and are set out in other legislation.

Meeting Considerations

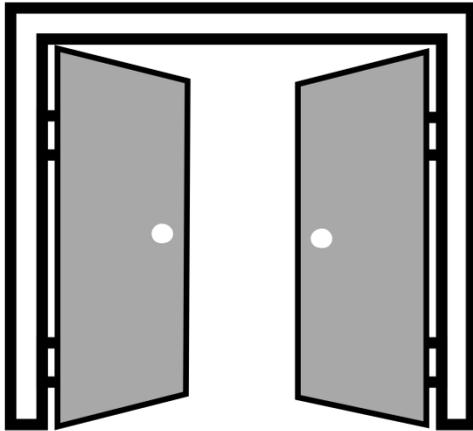
- When deciding about whether a gathering is a “meeting” for the purposes of the meeting rules in the Act, a council or local board may wish to consider:
 - is the subject matter something traditionally municipal or something municipalities make decisions about?
 - how many members are present?
 - did the attendees take a position on, or agree or disagree with, an item of council business?
 - are municipal resources being used?
 - are municipal staff present and what is their role?
 - is the municipal decision-making process transparent?
 - how are members participating (e.g., in person, email, teleconference)?
- In addition, it is possible that a gathering of council or board members may be a “meeting” for the purposes of the meetings rules in the Act whether or not the gathering:
 - was called a “meeting” or some other term (e.g., “workshop”)
 - followed formal procedures
 - took place on municipal premises or happens within or outside the municipality

Meetings

- Powers of a municipality are generally exercised by by-law and decisions are made at council meetings
- Quorum is generally required to conduct council business
- It is important to hold council meetings on a regular basis, which may promote the accountability of council to its electors and public confidence and trust in the leadership and governance
- If a council is unable to hold a meeting for a period of 60 days because of a failure to obtain a quorum, the minister may by order declare all the members' seats vacant and a by-election may be held.
- Electronic participation in meetings:
 - Municipal procedure bylaws may provide that
 - members may participate in meetings electronically
 - members participating electronically may be counted in quorum

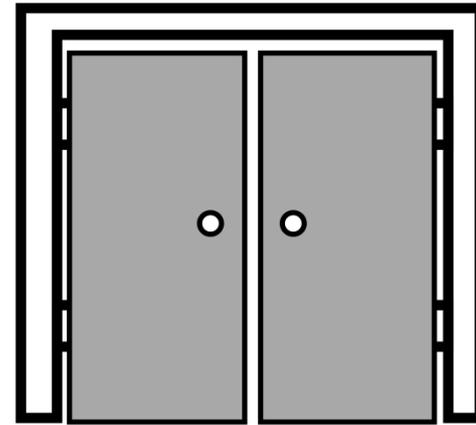
Open and Closed Meetings: Public Business

Open Meetings



- Transparent decision-making processes may be seen as part of the foundation of good municipal governance
- Most municipal council and local board meetings must be open to the public

Closed Meetings



- There are a limited number of exceptions. For example, meetings may be closed to the public for consideration of litigation, or personal matters about an identifiable individual.
- A resolution is required before holding a closed meeting

When A Meeting May Be Closed

- A meeting or part of a meeting may be closed to the public if the subject matter being considered is, among other things, related to:

Security of
municipal or local
board property

Personal matters
about an
identifiable
individual

Proposed or
pending land
acquisition or
disposal

Labour relations or
employee
negotiations

Litigation or
potential litigation

Advice subject to
solicitor client
privilege

When A Meeting Shall Be Closed

- The Municipal Act provides that a meeting or part of a meeting shall be closed to the public if the subject matter being considered is:

A request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act

An ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ontario Ombudsman, a municipal Ombudsman, or a meeting investigator

Closed Meeting Procedures

- Before holding a meeting closed to the public generally a council, local board or committee must state by resolution:
 - the fact of holding the closed meeting
 - the general nature of the matter to be considered
- Generally, a meeting must not be closed during the taking of a vote. However, a meeting may be closed during the taking of a vote in limited circumstances, including:
 - to give instruction to staff
 - procedural matters

Electronic Meetings – What Can a Municipality Do?



- Procedure by-laws may be amended to:
 - Enable electronic participation at meetings
 - Provide that members may participate in open and closed meetings electronically
 - Provide that members participating electronically may be counted towards quorum
- Municipalities have the flexibility to consider:
 - Whether to pass a bylaw respecting electronic participation
 - The extent and manner of electronic participation – for example, consider which technology best suits their local circumstances

Voting and Proxy Voting

- Each member of council has one vote
- Municipalities have flexibility to choose to allow proxy votes for council members who are absent from meetings, subject to certain conditions
- Applies to all municipalities: upper, lower and single tier
- If proxy voting is to be permitted, a municipality must amend its procedure by-law
- A proxy can be revoked
- Considerations for municipalities include:
 - how proxies may be established and revoked
 - circumstances in which proxies may or may not be used
 - how a proxyholder may participate in a meeting including voting, speaking or asking questions on behalf of the appointing member
 - whether to amend the code of conduct or other policies to address proxy voting to



Proxy Voting Limitations



- The *Municipal Act, 2001* provides for certain limitations:
 - Proxyholder must be a member of same council
 - A member cannot be proxyholder for more than one other member at the same time
 - Appointed proxy is not counted towards quorum
 - Member appointing a proxy shall notify the clerk of the appointment
 - During recorded votes, clerk shall record name and vote of every proxyholder and name of member proxyholder is acting for
- Council member absence rules still apply
 - A member's seat would become vacant if absent from meetings for 3 successive months without approval of council by resolution

Proxy Voting – Accountability and Transparency

- Existing accountability and transparency requirements apply
 - For example, *Municipal Conflict of Interest Act*

Considerations

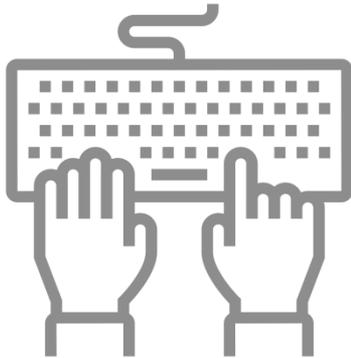
Communicate to the public about the use of proxies

Publish meeting agendas in advance to permit time for proxies to be appointed

Allow members of council to participate electronically when not able to attend in person

Consult the Municipal Councillor's Guide for more information on accountability and transparency

Minutes - Record of Meeting



Record without note or comment all:

- **Resolutions**
- **Decisions**
- **Other proceedings** at a meeting, whether open or closed



The record shall be made by the:

- **Clerk** (for meeting of council)
- **Appropriate officer** (for meeting of a local board or committee)

Closed Meeting Investigation

- A person may request an investigation of whether a closed council or local board meeting complied with the meetings rules in the Act or a procedure bylaw
- A municipality may appoint a closed meeting investigator.
- If the municipality does not appoint a meeting investigator, by default, the investigator is the Ontario Ombudsman
- After a complaint and investigation, a meeting investigator may report with recommendations to council
- The municipality or local board is required to the report public and pass a resolution stating how it intends to address the report

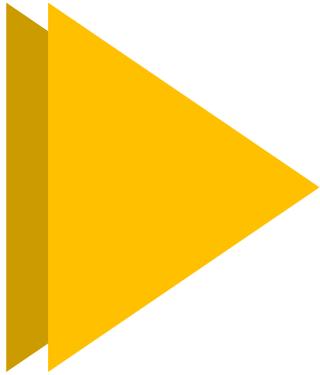
Section 4: Municipal Government

Municipal Government



- The *Municipal Act, 2001* provides that municipalities are:
 - a geographic area whose inhabitants are incorporated
 - created by the Province of Ontario
 - responsible and accountable governments within their jurisdiction
 - given powers and duties under the Act and many other Acts for the purpose of providing good government with respect to those matters

Municipal Roles and Responsibilities



- The *Municipal Act, 2001* establishes the basic framework for municipal government
- Authority for important municipal activities can also be found in other statutes, including:
 - Planning Act
 - Building Code Act
 - Housing Services Act
 - Police Services Act
 - Fire Protection and Prevention Act
 - Emergency Management and Civil Protection Act
 - Safe Drinking Water Act
 - Municipal Elections Act
 - Ontario Works Act
 - District Social Services Administration Boards Act

Service Managers

- Municipalities can be designated as service delivery agents for Ontario Works, childcare, and affordable and social housing
- Municipalities may also have specific responsibilities in connection with delivering services such as land ambulance and public health
- There are 37 municipal service managers and 10 District Social Services Administration Board service managers delivering certain social services.
 - In southern Ontario, service managers are upper-tier or single-tier municipalities.
 - In northern Ontario (other than the City of Greater Sudbury), municipal service managers are District Social Services Administration Boards.

Committees, Local Boards and Other Special Purpose Bodies

- Considerable variety of committees, local boards and special purpose bodies, which can be provincially and municipally established

Committees

(may be part of local governance structure)

- May include standing committees or advisory committees
- Municipalities decide on composition
- Can draw on members' areas of expertise, perspectives or experiences

Local Boards

(may carry special legal status)

- May have particular rules and rights and responsibilities
- Not all special bodies are local boards
- Each local board needs to be looked at individually

Municipal Service Boards

- May be used by one or more municipalities to help manage a broad range of municipal services such as utilities, waste management, transportation, parking
- Can be established by one municipality or by two or more municipalities

Municipal Associations

- The *Municipal Act, 2001* (Act) states that the Province of Ontario endorses the principle of ongoing consultation between the Province and municipalities on matters of mutual interest
- The Act requires the Province to consult with municipalities in accordance with a memorandum of understanding (MOU) between the Province and the Association of Municipalities (AMO)
- AMO is a non-profit organization that represents almost all municipalities in the province.
 - There are several specialized municipal associations that are part of AMO
- There are many other municipal associations; including:
 - professional municipal organizations with subject matter specialties
 - municipal groups whose membership includes a mix of political and professional staff.
 - municipal political associations
 - regional associations that work closely with the ministry

Section 5: Municipal Organization

Municipal Organization

- The *Municipal Act, 2001* provides for 3 types of municipalities:



Upper tier municipalities

within a two-tier municipal structure



Lower tier municipalities

within a two-tier municipal structure



Single tier municipalities

not part of a two-tier structure

Municipal Organization - Northern Ontario

- Municipalities in northern Ontario are single-tier
- Much of northern Ontario is not organized for municipal purposes
 - these areas are not municipalities
 - sometimes referred to as territories without municipal organization or unincorporated territory
- Ten District Social Services Administration Boards (DSSABs) are designated as service managers (SMs)
- These DSAABs provide certain services (such as Ontario Works) to both municipalities and unorganized territory
- Exception - the City of Greater Sudbury is designated as SM within the territorial area of that City
- Services in territory without municipal organization may be provided to residents through local services boards and/or local roads boards

Municipal Restructuring

- The restructuring process is set out in sections 171-173 of the Municipal Act, 2001 and Ontario Regulations 204/03 and 216/96
- Principal forms of restructuring include:
 - annexation; and
 - amalgamation
- Most restructuring proposals are locally developed
- Restructuring can be implemented by a Minister's order or special legislation
- You may wish to contact your municipal advisor early in the development process for assistance when considering a restructuring proposal.

Local Government and Indigenous People

- Half of all Indigenous peoples live in municipalities
- All municipalities in Ontario are located on Aboriginal treaty lands
Aboriginal and treaty rights of Aboriginal peoples are protected under section 35 of the Canadian Constitution
- Municipalities need to be aware of the content of the treaties within their geographical area. It's also important to be aware of the history, cultures and interests of Indigenous people in the area
- All municipalities should make every effort to ensure that municipal decision-making reflects commitments made in treaties, established or asserted Aboriginal rights and Indigenous interests, along with the needs and perspectives of urban and rural off-reserve Indigenous communities

Engaging With Indigenous Partners

- Much municipal decision-making, policies, procedures, and services impact Indigenous interests
- Look for opportunities for reconciliation with Indigenous people through engagement, consultation, and collaborations between municipalities and Indigenous communities/ organizations on matters of mutual interest

Municipal opportunities for reconciliation



Land Use Planning and Development



Environmental Sustainability



Capital Infrastructure Projects



Community Services & Housing



Public Health



Law Enforcement and Justice



Economic Development

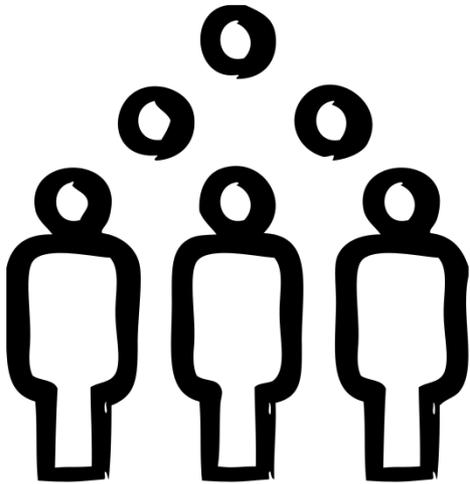


By-laws, Corporate Initiatives



Section 6: Changes to Council Composition

Changes to Council Composition



- Council has authority to alter its composition including:
 - council size
 - members' titles
 - certain methods of election or selection of members
- These changes are made through local by-laws

Changes to Upper Tier Council Composition

- An upper-tier municipality making changes to its council composition must receive “triple majority support” to complete council composition changes
- A triple majority consists of:
 - a majority of all votes on upper-tier council
 - a majority of all the lower-tier councils having passed resolutions consenting to the by-law, and
 - the total number of electors in the lower-tier municipalities that have passed resolutions consenting to the by-law from a majority of the electors in the upper-tier municipality

Regular Reviews of Regional Council Composition

- The *Municipal Act, 2001* requires regional municipalities to undertake a review to change or affirm their regional council composition after every second municipal election
- Regional municipalities can either change or affirm their regional council composition, but if a regional municipality fails to receive triple majority support for the by-law or resolution, the Minister has the authority to make a regulation to change the composition of council

Filling a Vacancy on Council

- If a municipal council seat becomes vacant, council must declare the council seat vacant at its next meeting
 - Exception: In the case where the vacancy is due to death, the declaration may be made at either of the next two meetings
- Within 60 days of declaring the seat vacant, council must decide whether to fill the vacancy through a by-election or by appointment for the remainder of council term. If an office becomes vacant after March 31 in a regular election year, the seat may be filled only by appointment
- A vacancy must be filled unless it occurs within 90 days before voting day in a regular election

Filling by Appointment	Filling by By-Election
<ul style="list-style-type: none"> • Council can decide what process it will use to choose the person it appoints • Appointee must consent to the appointment and be eligible to hold office 	<ul style="list-style-type: none"> • Council must pass a by-law • The clerk is responsible for conducting the by-election and fixing nomination day • Voting day is 45 days after nomination day

Temporary Replacements for Upper-Tier Council

- If a person who is a member of both the lower-tier and its upper-tier council is unable to act as a member of those councils for a period exceeding one month, a local council may appoint one of its members to act as an alternate member of the upper-tier council until the original member is able to resume their duties
- A lower-tier council may also appoint one of its members as an alternate member of the upper-tier council to attend a meeting of the upper-tier for any reason

Section 7: Council as Lawmakers

Pregnancy and Parental Leave

- The *Municipal Act, 2001* provides the opportunity for members to take pregnancy and parental leave
- Municipalities are required to have policies regarding pregnancy and parental leave
- Council member seats do not become vacant due to absences for a period of 20 consecutive weeks or less related to the member's pregnancy or the birth or the adoption of the member's child.
- Councils may decide to extend this period and provide for a longer leave for its members

Council as Lawmakers



- Municipal by-laws can have a significant impact on residents in the municipality.
- Municipalities act by by-law. Municipal policies put in place through by-laws can help shape the long-term health and well-being of your community.
- There are various legal considerations and limits on municipal powers.

Key Legal Considerations – Local Decision Making



Sources of Law

Source Law

- Municipal Act; Acts specific to municipalities (e.g., City of Hamilton Act, 1999); Private acts; Other general acts (Planning Act, Building Code Act); Regulations; Federal statutes: e.g. Canada Mortgage and Housing Act

Administrative Law

- **Legal principles may be established by statute and by** decisions made by **courts**, boards and tribunals

Boards and Tribunals

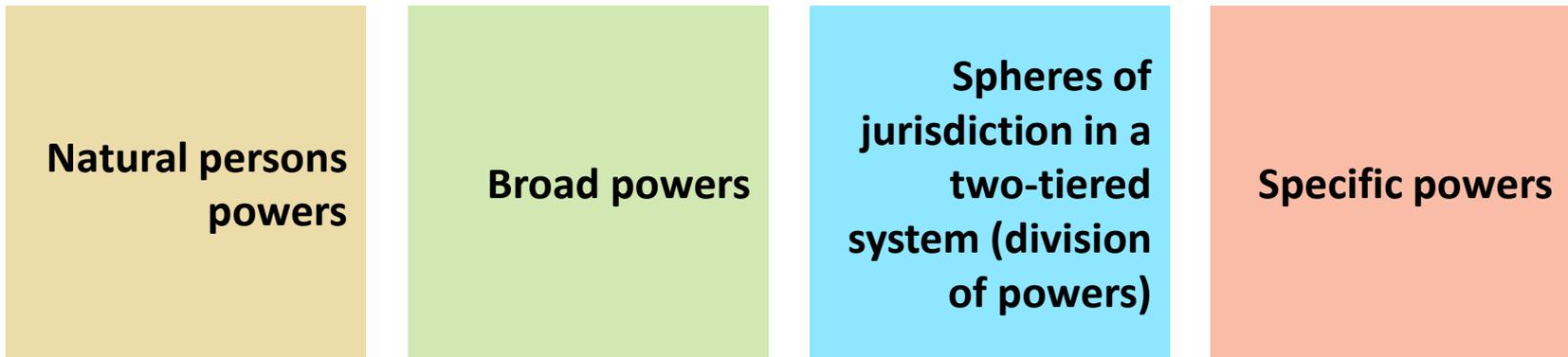
- Examples **of boards and tribunals** include: Ontario Land Tribunal, Ontario Labour Relations Board, Workplace Safety and Insurance Board, Assessment Review Board

Case Law

- **Legal principles may be established by court** decisions

Municipal Powers

- The Municipal Act and other provincial legislation give municipalities a variety of powers, set out duties, and establish limits on those powers.
- Powers under the Municipal Act fall into various general categories including:



- Given the complexity of municipal powers, duties and limits, you may wish to seek advice from municipal staff and/or municipal solicitor.

Municipal Powers – Natural Person Powers

- Natural person powers give municipalities similar flexibility to that of individuals and corporations in managing their organizational and administrative affairs without the need for more specific legislative authority.
- **Natural person powers** may include:
 - the hiring of staff
 - entering into agreements
 - acquiring land and equipment

Municipal Powers – Broad Powers

- Broad-powers include, **subject to certain limits:**
 - governance structure of the municipality and its local boards
 - accountability and transparency of the municipality and its operations and of its local boards and their operations
 - financial management of the municipality and its local boards
 - public assets of the municipality acquired for the purpose of exercising its authority under this or any other act
 - economic, social and environmental well-being of the municipality
 - health, safety and well-being of persons
 - services and things that the municipality is authorized to provide
 - protection of persons and property, including consumer protection
 - animals
 - structures, including fences and signs
 - business licensing

Municipal Powers – Spheres of Jurisdiction

- Spheres of jurisdiction rules in the Municipal Act
 - divide certain powers between upper-tier and lower-tier municipalities
 - An upper-tier or lower-tier municipality (or both) may pass bylaws within all or part of certain spheres in accordance with those rules
 - highways, including parking and traffic on highways
 - transportation systems, other than highways
 - waste management
 - public utilities
 - culture, parks, recreation and heritage
 - drainage and flood control, except storm sewers
 - structures, including fences and signs
 - parking, except on highways
 - animals
 - economic development services
 - business licencing

Municipal Powers - Licensing

- Licensing
 - Municipalities have authority to license and regulate many businesses
 - Examples include:
 - taxicabs
 - tow trucks
 - adult entertainment establishments
 - trailer camps, etc.
- Municipalities may:
 - impose conditions on a license
 - suspend a license

Municipal Powers – Specific Powers and Limits

- Specific Powers:
 - May be described as powers expressly given to municipalities outside of the broad powers
 - could include provisions under the Municipal Act and many other statutes
- Some rules and limits are placed on municipal powers. For example, generally
 - bylaws cannot conflict with federal or provincial statutes or regulations
 - broad powers are subject to procedural requirements and other limitations existing in legislation except where expressly authorized, a municipality can only exercise its powers within its municipal boundaries
 - the province may, by regulation, limit some powers of a municipality



Section 8: Exercising Municipal Powers

Delegation

- Municipalities have broad authority to delegate some powers and duties, subject to certain restrictions
- Streamlines council decision-making by delegating minor matters permitting council to focus on larger issues
- Builds on authority to create local bodies (e.g. advisory committees) to assist with local decision-making
- Powers that cannot be delegated:
 - appointing or removing statutory officers required under the *Municipal Act, 2001*
 - imposing taxes
 - incorporating corporations
 - adopting or amending official plans
 - passing zoning by-laws
 - passing certain by-laws related to small business counselling and municipal capital facilities
 - adopting community improvement plans which authorize bonusing
 - approving and amending municipal budgets
 - other powers as prescribed

By-laws and Resolutions

By-Laws

- The powers of your municipality shall be exercised by by-law unless the municipality is specifically authorized to do otherwise
- Generally, by-laws must be:
 - signed both by the head of council or presiding officer of the meeting at which the by-law was passed and by the clerk
 - under the seal of the corporation
- Additional requirements may apply before passing a by-law, such as public meetings, public notice and, provincial approval
- When passing by-laws, municipalities should consider how they will be enforced

Resolutions

- An expression of an opinion of council
- Municipality's position on various issues or concerns about existing government policy, regulations or funding

Procedural Requirements

- Proper procedures are important when passing or amending by-laws
- Some councils pass by-laws on the day they are first presented, while for others, a longer time may be needed for practical or legal reasons
 - the procedural by-law may require advance notice of the introduction of certain by-laws
 - Statutory rules require two readings of certain by-laws (e.g., section 75 of the *Drainage Act, 1990*)

Legal Considerations

- Municipalities are responsible and accountable governments, and many important legal considerations may apply to their actions

Hearings	Good Faith, Reasonableness and the Courts
<ul style="list-style-type: none">• for some actions council may decide it needs to hold a hearing for legal or other reasons (e.g., fair treatment of people involved, such as an individual license holder)	<ul style="list-style-type: none">• Municipal decision must not be based on fraud, oppression or improper motive• courts decide about good faith and other legal issues on a case-by-case basis

Enforcement of By-laws

- By-laws will have little value unless a municipality has the determination and means to enforce them
- Before passing a by-law, it may be helpful to consider its intended purpose and outcomes
- Implications of passing a by-law may include issues such as:
 - how will the by-law affect the community?
 - will it impose restrictions or hardships on particular areas or groups of people?
 - what will public reaction be and how will council respond?
 - what will it cost to administer the by-law?
 - can existing staff take on additional responsibilities or will more staff be required?
 - is the municipality prepared to enforce the by-law and enforce it consistently?

General Responsibility for Enforcement

- Municipal by-laws can be enforced by:
 - By-law enforcement officers;
 - Independent service providers hired by council;
 - A municipal police force or the Ontario Provincial Police (OPP); and/or
 - A person within the community who is dissatisfied with the level of enforcement by the municipality can initiate a private prosecution
- The Municipal Act provides that a municipality may establish a system of fines for offences under a by-law of the municipality
- In addition to fines and offences, municipalities can establish a system of administrative penalties
- Other by-law enforcement powers provide for other powers related to by-law enforcement including, powers of entry, search and seizure, applications to courts, etc. All are subject to restrictions and conditions

Actions Against the Municipality

Ultra Vires

Any person may apply to the Superior Court of Justice to quash a by-law, in whole or in part, for illegality.

Civil Action for Damages

Municipality may be sued for failure to carry out, or negligence in the conduct of, its legal duties.

Appeals

Individual may appeal municipal decisions to the courts and to certain quasi-judicial bodies (e.g. Local Planning Appeal Tribunal and the Assessment Review Board).

Judicial Review

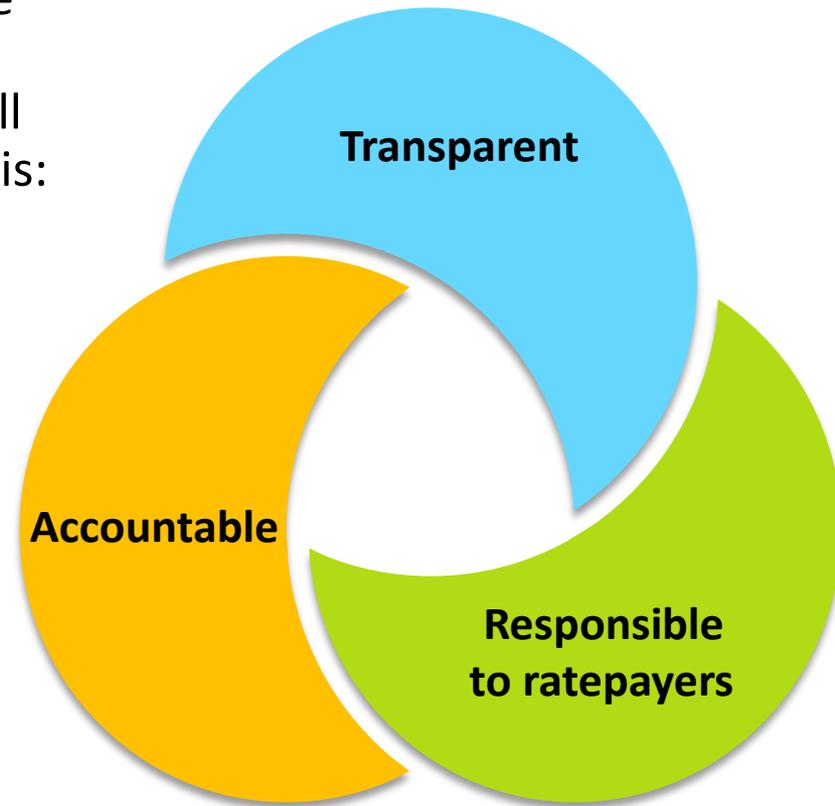
Limited to situations where it is alleged that the municipality proposes to act, or has acted, without power or beyond its powers, or has refused to exercise a mandatory power.

Individual may take action to bring matter before the courts for a legal remedy.

Section 9: The Fiscal Context

Fiscal Context

- As municipal council, you are tasked with governance and oversight of the financial well being of a municipality, that is:



Budgeting

- Budgets are powerful management tools.
- Municipalities are required to annually prepare and adopt a balanced budget.
- Budgets are a reflection of what you plan to do for the year.
- The budget process includes elements of planning, and typically involve coordination amongst municipal departments and budget committee, and controllership.



Budget Preparation

- Timing varies amongst municipalities as to when budgets are started and finalized.
- Staff will be able to advise as to your municipality's process.

Typical Budget Cycle



Operating and Capital Budgets

Operating

- Operating budgets reflect your municipality's day-to-day expenditures, such as salaries, wages, benefits, heat, hydro, maintenance of buildings and infrastructure.
- They may act as an operations guide, a financial plan, a policy document and a communications tool.

Capital

- A capital budget typically provides for existing infrastructure, such as water treatment plants, storm sewers, recreation centres, parks, and roads maintenance or new infrastructure.
- Through capital budgets, in conjunction with an asset management plan, the municipality can plan important future spending including debt repayment, and reserve fund contributions.

Financial Reporting to the Public



For Municipalities

Audited Financial Statements
Financial Information Return (FIR)



For Service Managers

Service Manager Annual
Information Return (SMAIR)

Financial Information Return (FIR)

- The FIR is an invaluable resource for both the province and the municipality
- The province uses it for many purposes including:
 - calculating grant amounts
 - developing policies and programs
 - monitoring the financial status of municipalities
 - preparing municipal debt limit reports
- From a municipal perspective, the FIR may be seen as an integral tool with many applications including:
 - preparation of year over year comparisons, trend analysis, forecasting
 - performance measurement and for comparative purposes with other like municipalities on key indicators (for example, debt and reserve levels)
 - supporting land use planning, strategic planning, and asset management planning.

Financial Information Return (FIR) (Continued)



About The Financial Information Return

Note: For a better viewing experience on the FIR website, please use Chrome or Firefox.

The Financial Information Return provides a standardized reporting of a municipality's financial activities in the previous fiscal year (January to December).

Section 294 (1) of the Municipal Act states that *the treasurer of a municipality shall in each year provide the Minister with a return containing information designated by the Minister with respect to the financial affairs of the municipality*. This takes the form of the annual Financial Information Return (FIR). Municipalities must submit FIRs annually to the Ministry of Municipal Affairs and Housing by May 31.

Through the FIR template, a standard Excel workbook, the Ministry collects data on municipal financial position and activities, such as assets, liabilities, revenue, expenses, over the course of the previous fiscal year (based on the audited financial statements), as well as municipal statistical information. The template is updated annually to reflect changes to legislation and reporting requirements.



[Link to FIR Site](#)

Data Based Analysis



- Some questions to consider:
 - How do your tax levels compare to other similar municipalities? What factors does your council consider when setting your tax rates? How does your council communicate tax rate or budget changes to your taxpayers?
 - Does the municipality have policies or practices in place to address the pressures from outstanding assessment appeals (e.g. tax stabilization reserves, reserves to help address changes or decreases in tax revenue)?
 - Is the level of tax arrears in your municipality increasing or decreasing? What factors in your community have affected the level of tax arrears? How does your municipality compare to others?
 - How does its long-term debt level compare to other municipalities? Are debt servicing costs increasing or decreasing? Is your municipality's level of long-term debt increasing or decreasing? Is this consistent with any debt management policy?

Capital Financing Sources

- Main sources of capital funding

Internal Sources

- General revenue, which may involve transfer or use of funds from or identified in the current-year operating budget
- Existing reserves and reserve funds

External Sources

- Government grants (federal and provincial)
- Fundraising or donations
- Payments to a municipality through public-private partnership arrangements

Other

- External borrowing
- Long-term leases

Debt Management

25%

ARL



- Generally, a municipality may not commit more than 25% of its total own-source revenues to service new long term debt and other long-term obligations without prior approval of the debt from the Ontario Land Tribunal
- This limit is known as the annual repayment limit (ARL)
 - The Ministry of Municipal Affairs and Housing issues an ARL statement to every municipality (except the City of Toronto) each year using the data submitted annually through the FIR
 - Municipal treasurers update the limit to determine if there is capacity before undertaking new borrowing
- There are indicators municipalities can use to help assess their ability to service long term debt
- Pay-as-you-go capital financing versus use of long term debt is a municipal decision.

Sources of Municipal Revenue

- Municipal revenue may be broadly categorized as property tax revenue and other revenue.
- Property tax represents approximately 40% of overall municipal revenues in Ontario.



Property Tax Revenue

Examples: Property tax, Special area rates, payments-in-lieu of taxes



Other revenue

Examples: Conditional and unconditional grants, User fees for services, Licensing fees, Investment income, Development charges, Fines and penalties, Municipal Accommodation Tax (Hotel Tax), Local improvement charges

Setting Property Tax Rates

- Property tax rates are calculated and decided on by municipalities annually after the budget is established and the total amount of revenue to be raised through property taxes has been determined.
- Property assessment values, which are generally determined by the Municipal Property Assessment Corporation (MPAC), are also used in the calculation of property tax rates.
 - MPAC regularly assesses all properties based on current value.
 - The cumulative value of all assessment in a municipality may be seen as its tax base.
- Municipalities set their own municipal tax rates for each property class (e.g., residential, commercial, industrial), in accordance with the provincial framework.
 - The relative tax burden on each property class is considered in this process.



Property Taxes

- Property taxes are generally comprised of a municipal portion and an education portion.
 - The municipal portion is calculated by multiplying the property assessment by the municipally-determined tax rate(s).
 - The education portion is calculated by multiplying the property assessment by the education tax rate which is set by the province, for each property class.
- Lower tier municipalities collect taxes on behalf of upper tier municipalities (which set their own tax rate) and school boards, in addition to collecting their own taxes.



Tax Billing and Collections

Billing

- Tax bills are issued on the basis of the returned assessment roll as provided by MPAC
- Lower and single tier municipalities issue tax bills
- Council determines whether taxes are to be paid in installments and how many, when due, and penalties for late payment.

Collection

- There may be options as to how to collect unpaid taxes, for example:
 - court proceedings
 - seizure of chattel
 - rent attornment

Tax Relief

- Legislative framework for mandatory and discretionary municipal property tax relief programs (e.g., for charitable organizations, low-income seniors and disabled persons)

Tax Sale

- There is a legislative framework setting out the tax sale process.
- The process may be commenced after taxes remain outstanding for two years.

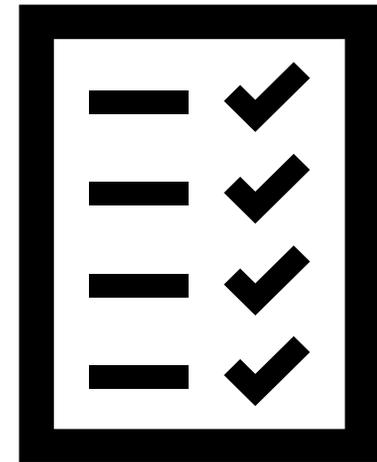
Shared Service Arrangements

- Invaluable tool to maintain, expand or add services that may have otherwise been beyond the municipality's capacity (financially and resource wise)
- It is not new to municipalities, a majority of municipalities have shared service arrangements
- Potential benefits of shared services:
 - cost savings from economies of scale
 - service enhancements and expansions
 - access to specialists, skilled labour and/or better quality equipment
 - tap into new revenue streams that require many users or inputs
 - seamless service integration across a region

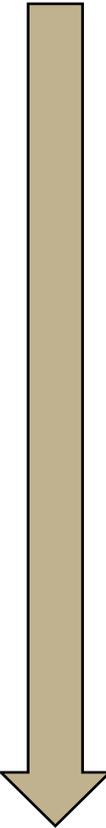


Municipal Asset Management Planning

- Asset management planning is the process of making coordinated decisions regarding the building, operating, maintaining, renewing, replacing, and disposing of infrastructure assets.
- Ontario Regulation 588/17 (“Asset Management Planning for Municipal Infrastructure”) came into effect on January 1, 2018.
- Asset management plans continue to be a requirement for certain provincial infrastructure funding.



Overview of Asset Management Regulation



Strategic Asset Management Policy
(By July 1, 2019)

Requires municipalities to outline commitments to best practices and continuous improvement.

Asset Management Plan: Phase 2
(By July 1, 2022)

For core assets (water, wastewater and stormwater assets, roads, bridges and culverts):

- Inventory of assets
- Current levels of service measured by standard metrics
- Costs to maintain levels of service

Asset Management Plan: Phase 3
(By July 1, 2024)

Builds on the Phase 2 plan to include all municipal assets, including current levels of service and costs to maintain these levels.

Asset Management Plan: Phase 4
(By July 1, 2025)

Builds on Phase 3 where plans shift to:

- Proposed levels of service
- Lifecycle management and financial strategy for all assets

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