



Council Members Guide

*Once Elected...
What is
Expected?*

2010 - 2014

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CONGRATULATIONS

Congratulations to all new and returning members of Council on your success in the 2010 general municipal election.

In making your decision to sit on Council, you have accepted an important responsibility. As an elected local government over the next four years, your Council will be charting the course of your municipality into the future. You will be making decisions that affect every citizen and property owner in your municipality.

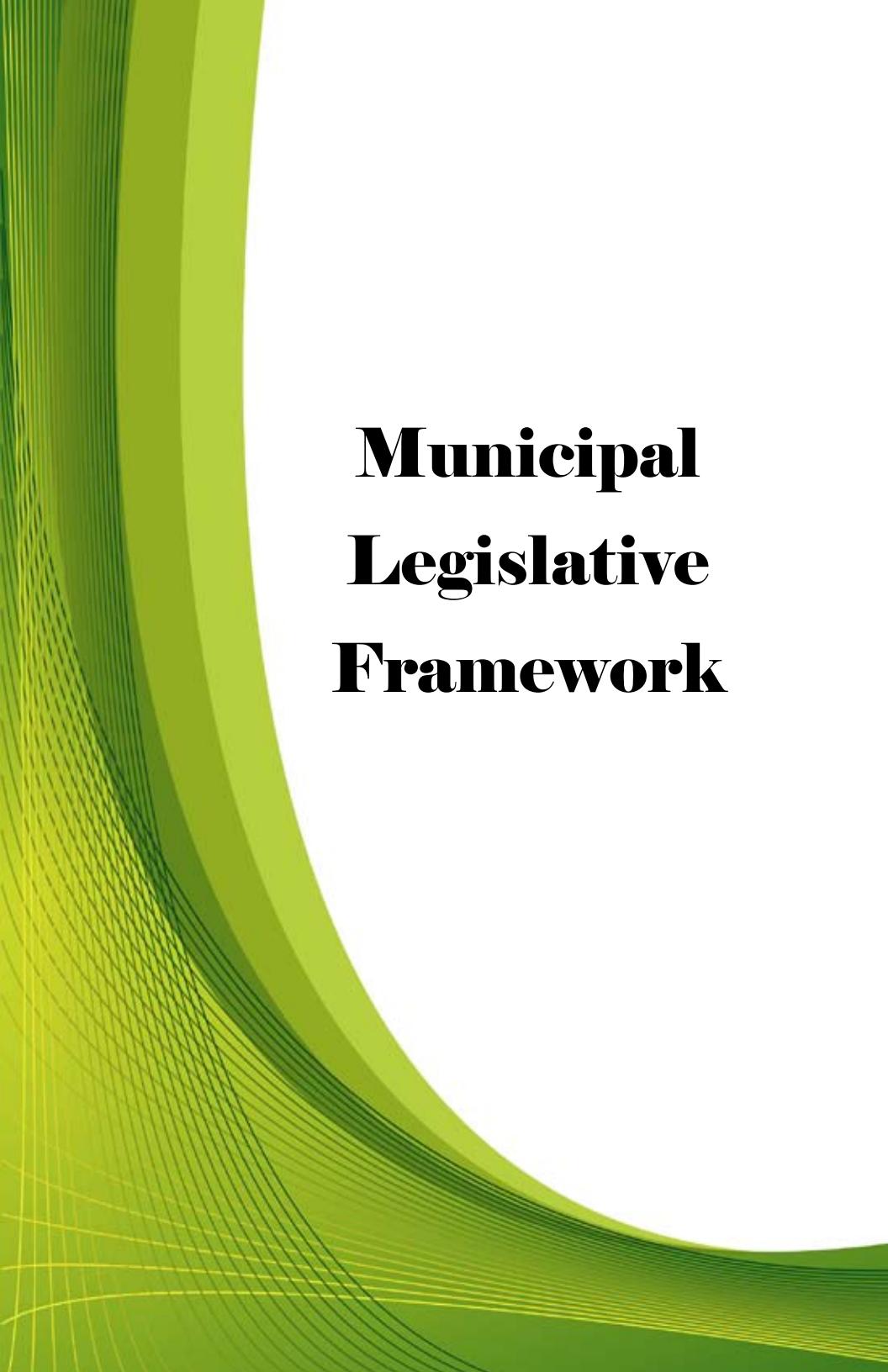
Considerable trust has been placed in you, along with other members of Council, to govern your municipality objectively, fairly and most importantly, with the public's best interest in mind.

As a municipal council member, you will no doubt have many exciting, often challenging and very rewarding experiences. This guide provides you with an overview of what you will encounter in your term of office, such as the roles of council and administration, conflict of interest, public participation in municipal decision-making and council's role in financial management. It also provides you with helpful tips, to assist you to make a positive and lasting contribution to your municipality.

The Association of Manitoba Municipalities, together with Manitoba Local Government, wish you success over your next four years!

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Municipal Legislative Framework

THE MUNICIPAL LEGISLATIVE FRAMEWORK

Municipalities are responsible, accountable and mature governments. Recognizing this, *The Municipal Act* provides a flexible, enabling framework to enable municipalities to govern efficiently and effectively in today's environment. Municipalities have flexibility and autonomy to manage their own affairs and to make decisions that they think will best meet the needs of their communities.

Recognizing this, there are very few services that municipalities are required by legislation to deliver. Required services include waste management, maintenance of municipal roads, protective services such as a fire and for some municipalities (urban municipalities of 750 or more population) police services, and land use planning.

Municipalities, however, can deliver a wide and varied range of other services that are not required by legislation, such as recreation and economic development, as long as these services are within their legislative authority. These services reflect municipalities' own local priorities.

Municipalities are given powers under the Act that they use to deliver municipal services:

- **Government powers** – municipalities have powers that are available only to governments. These are significant powers because they have a direct impact on citizens and property owners. These powers include the authority to tax property, to take an individual's property for non-payment of taxes through the tax sale process, and to expropriate land for municipal purposes.

Government powers also include the authority to make laws, known as by-laws, in the municipality that regulate the behaviour of individuals or private property. Examples include land use planning and building by-laws, noise by-laws, animal control by-laws, unsightly property and derelict vehicle by-laws. Municipalities have authority to enforce their own by-laws.

- **Corporate powers** – municipalities have powers similar to other individuals or businesses, which enable them to operate their municipalities. These powers include the authority to buy and sell land, to buy equipment, to enter into agreements for services or to tender work.

Under *The Municipal Act*, municipalities have considerable autonomy and independence within the broad parameters of the legislation. This autonomy and independence is balanced with requirements for transparency and public accountability recognizing that municipalities are accountable to their citizens first and foremost.

Other legislation also applies to municipalities, and is outlined in Appendix B.

Remember!

- ❖ Municipalities are governments accountable to their citizens.
 - ❖ Councils have significant government and corporate powers – use them wisely.
-

Role of Council

ROLE OF COUNCIL

Council is elected to make decisions for the municipality about services, policies and programs. Council members have an equal voice at the council table – every council member has one vote. A majority vote is required to make a council decision.

A Council decision is the decision of the municipality. All council members must respect the decision, even when they did not vote in favour.

Council is required by *The Municipal Act* to make decisions that are in the best interests of the municipality as a whole. Individual council members elected on a ward basis must consider the needs of the entire municipality and not only the needs of the ward they represent.

Councils may delegate certain powers, duties or functions to the head of council, a council committee, the Chief Administrative Officer or another designated officer for the municipality. However, there is no authority to delegate powers, duties or functions to an individual council member. This means that individual council members have no authority to make a decision on behalf of the municipality. If they do, they may be held financially or legally liable.

Council

Council is comprised of a head of council, called the Mayor or Reeve, and a minimum of four and a maximum of 10 councillors. Municipalities determine their own council size, by by-law. The size of Council usually reflects the geographic size of the municipality, its population, and the level of services and programs.

In addition to the elected members, Councils may also appoint a youth member – a person who is less than 18 years of age or attending school full time – to sit on Council as a non-voting member.

Appointing youth members is a way to bring new perspectives to the Council table and to generate interest among youth in local government. Several municipalities have appointed a youth member and have reported that it is a positive experience for all.

Council's responsibilities, established in *The Municipal Act* comprise:

- **Developing and evaluating the policies and programs of the municipality** – Council's primary role is to ensure services are provided to citizens and property owners. This involves establishing policies about what programs and services are to be delivered, the level of those services, and how those services are to be delivered.

Council is also responsible to ensure that these programs and services meet their objectives and deliver the desired outcomes.

Many municipalities develop and maintain a policy manual. A policy manual provides a sound basis for decision-making and can ensure that policies are consistently implemented by the municipality's administration, and clear to council, administration and the public.

- **Ensuring that the powers, duties and functions of the municipality are appropriately carried out** – Council is accountable to the public for the decisions it makes. Council is also responsible for ensuring that the municipality operates in an open and transparent manner.

- **Carrying out the powers, duties and functions expressively given to Council under the Act or any other legislation** – Council is responsible to ensure that the municipality acts within the legislation. A municipality can be taken to court by any person if it acts outside its legal authority.

As well, Council is responsible to ensure that the municipality meets all requirements established in legislation, such as the requirement to hold public meetings on certain matters, maintain roads, develop an annual financial plan (budget) and pass a tax levy by-law, appoint an auditor, etc.

The legislation establishes minimum requirements however Council can go beyond these minimums, providing they act within their broad, legislative authority.

Mayor/Reeve

All Councils have a head of council, called either the Mayor or Reeve. The choice of title is a municipal preference, and makes no difference in terms of the role of the head of council.

The Mayor/Reeve is often the main spokesperson for the municipality when expressing the municipality's position to the media or the public, and when attending community events.

The Mayor/Reeve's responsibilities under *The Municipal Act* include:

- providing leadership and direction to council
- presiding over all Council meetings and Committee meetings when in attendance, except where the municipality's procedures by-law provides otherwise
- acting as a signing authority for the municipality
- calling a special council meeting

As well, the Mayor/Reeve is also responsible for all municipal decisions and actions under *The Freedom of Information and Protection of Privacy Act*, outlined in the Citizen Access to Information section of this guide.

The Mayor/Reeve also has all the responsibilities of a council member, discussed below.

Individual Council Members

Individual council members, including the Mayor/Reeve, also have responsibilities under *The Municipal Act*, including:

- considering the well-being and interests of the municipality as a whole. It is important to remember that wards are for election purposes. All council members, even if elected by ward, have a responsibility to the whole of the municipality.

- participating in developing and evaluating policies that direct planning, financing and municipal services.
- participating in and most importantly voting at Council meetings, Committee meetings, and on other bodies to which you are appointed. Council members are expected to attend and be actively involved in the business of those meetings.
- keeping municipal matters confidential until they are discussed at a meeting open to the public. The consequence for breaching confidentiality is disqualification from council.

Council Compensation

Council has the authority to set its own compensation, by by-law. Council compensation is almost always a sensitive topic and typically generates much public interest. Municipalities can avoid negative public criticism about payments made to members of council by developing sound policies for compensation and reimbursement of expenses.

A municipality's compensation policy should be fair and equitable, given the time spent on municipal business, and local costs and conditions.

In setting the level of compensation Councils should consider:

- policies of other similar sized and types of municipalities
- willingness and ability of your ratepayers to pay, including the financial situation of your ratepayers
- types of activities that are considered municipal business for which payments will be made

Council members can be compensated for attending municipal business, based on:

- a single fixed payment (annual, monthly or per diem) regardless of amount of time spent
 - OR
- actual time (such as a per meeting payment)
 - OR
- a combination that comprises a small fixed payment and a per meeting payment

The Canada Revenue Agency provides that a portion (1/3) of a council member's compensation is non-taxable. Council should identify the amount that is to be paid as a tax-free allowance and the amounts that are taxable (i.e. salary and other compensation) in its by-law. If this is not identified, all compensation will be considered taxable.

In addition to compensation for municipal business, council members can be reimbursed for allowable expenses incurred while attending to municipal business.

Council must first determine what expenses are considered to be allowable (for example, allowing mileage for travel to attend a meeting, but not child care costs). Council also needs to establish reasonable rates of reimbursement.

Reimbursement of expenses could consist of a payment based on:

- receipts provided
 - OR
- receipts provided up to a maximum amount
 - OR
- a fixed rate for meals, mileage, etc.
 - OR
- a combination of receipts and rates

Council members could instead be provided with a fixed allowance to cover all expenses incurred instead of a reimbursement of actual expenses. The Canada Revenue Agency considers a fixed allowance to be a taxable benefit.

Remember that the amount that council members are paid as compensation and reimbursement for allowable expenses is public information, as citizens have a right to know how their tax dollars are spent. Your Chief Administrative Officer (CAO) is required to include a detailed account of every payment made to council members in the municipality's annual financial statement, which is a public document.

Accountability and transparency is also improved when information is provided on a more regular basis, such as in a report submitted to Council at each council meeting or posted and regularly updated on the municipality's website.

Remember!

- ❖ **Council makes decisions about services, policies and programs of the municipality.**
 - ❖ **Only Council has the authority to make decisions for the municipality. Individual councillors who make decisions on their own may be held legally or financially liable.**
 - ❖ **Ward councillors must consider the interests and needs of the entire municipality.**
 - ❖ **Debate and discussion are positive, but once a Council decision is made, all members should respect it.**
-

Role of Administration

ROLE OF ADMINISTRATION

Your municipal administration – Chief Administrative Officer (CAO) and staff – is responsible to implement Council’s decisions and take care of the everyday work of managing your municipality.

Your CAO is the administrative head of the municipality and Council’s principal advisor. Your CAO is responsible for the administration, financial management, and human resource management of your municipality. Open, trusting and professional interaction between Council and your CAO is vital to the smooth operation of your municipality.

In almost every municipality, the CAO reports directly to Council, with other municipal employees reporting to the CAO. However, this does not preclude other municipal employees, such as your Public Works Manager, from making presentations directly to Council, if Council wants.

Chief Administrative Officer (CAO)

All Councils are required to establish the position of CAO, and appoint a person to carry out the powers of the CAO. Council may give the CAO any title – municipal administrator, town manager, or secretary-treasurer. The choice of title reflects your municipality’s preference and makes no difference in terms of the duties, responsibilities or functions of the position.

Municipalities can have their own CAO or can share a CAO with a neighbouring municipality. Sharing a CAO is often an effective option for smaller municipalities that do not have the resources to attract and retain a qualified CAO or that do not require a full time CAO.

Most CAOs are hired similar to any other municipal employee, with a position description and an agreed upon salary. Some municipalities have used employment contracts. Employment contracts are typically used when hiring for a defined period of time.

CAOs are assigned specific duties under *The Municipal Act*. Depending on your municipality's size, your CAO may perform these duties, or delegate them to another municipal employee. Your CAO is responsible to ensure that the duties are carried out, even if they are delegated to another employee.

Your CAO must:

- ensure that the policies and programs of the municipality are implemented
- ensure that minutes of each council meeting are prepared and distributed in a timely way
- provide professional advice and support for council's consideration and decision-making
- manage the finances of the municipality
- advise and inform council on the operation and affairs of the municipality
- manage, lead and direct the rest of the municipality's employees, unless Council decides otherwise

Councils should expect their CAO to:

- prepare and distribute council meeting agendas and supporting documents in a timely way, so council members can participate in the debate and make informed decisions
- prepare easy to understand monthly financial statements that provide a snapshot of the financial position of the municipality
- provide well-researched and easy to understand reports that contain options to address issues, and a recommended course of action for Council's consideration

Every municipality should have a position description that clearly outlines your CAO's duties and responsibilities. An effective position description defines the responsibility of the job, as well as the results that the CAO is expected to deliver. Refer to *A Guide to Hiring Your Chief Administrative Officer*, published by Manitoba Local Government (see Appendix A).

Council should also have a defined process in place to complete the CAO's performance review. Performance reviews should be conducted regularly (e.g. annually) and are an opportunity for council to provide feedback to the CAO on performance strengths and on areas requiring improvement. Many councils have established a Personnel Committee that is responsible for the CAO's performance review.

Designated Officers

Council establishes designated officer positions to carry out certain powers, duties or functions by by-law. Certain duties, established in *The Municipal Act*, must be performed by a designated officer, such as signing the municipality's cheques, inspecting properties and enforcing by-laws.

A designated officer may further delegate their powers, duties and functions to another municipal employee.

In most municipalities, the CAO supervises designated officers to ensure that they are appropriately exercising their powers and performing their duties and functions.

Employee Code of Conduct

As a Council, you should expect that all employees of your municipality perform their duties in such a way as to give citizens confidence that Council decisions and municipal policies are being objectively and fairly implemented. *The Municipal Act* requires all municipalities to establish a municipal employee code of conduct.

The municipal employee code of conduct applies to all employees of the municipality, including the CAO, full-time, part-time, contract or casual employees. The municipal employee code of conduct also applies to volunteers, such as volunteer firefighters, as they are considered employees under employment standards legislation.

The Act requires a municipal employee code of conduct to include minimum conflict of interest requirements.

Your municipal employee code of conduct must prohibit:

- use of “insider” or non-public information, such as passing on information obtained through internal discussions about the value of a municipal property anticipated to be sold
- use of an employee’s position to influence a decision to further their own interests, such as recommending their spouse’s company to do work for the municipality
- procedures that employees must follow if the employee suspects that they have a conflict of interest, such as reporting a potential conflict to a supervisor
- procedures for resolving a conflict, such as disclosing a potential conflict to a supervisor and withdrawing from discussions on matters where there is a potential conflict, and consequences of not disclosing or withdrawing

One of the first things Council should do is review your municipal employee code of conduct to make sure it meets the needs of your municipality and to consider whether revisions are required. A resolution of council is required to approve any revisions.

The Municipal Act Procedures Manual, distributed to all municipalities by Manitoba Local Government, includes a template Municipal Employee Code of Conduct that municipalities can use to review their existing codes.

Remember!

- ❖ An open, trusting and professional relationship between Council and your CAO is vital for the smooth operation of your municipality.
 - ❖ Your CAO is responsible to implement your decisions and for the everyday management of your municipality.
 - ❖ All municipalities are required by legislation to have an employee code of conduct. Review your code early in your term to make sure it meets your expectations.
-

Making Decisions

MAKING DECISIONS

Councils make decisions by passing by-laws and resolutions approved by a majority vote of council members at a meeting open to the public. If there is a tie vote, the vote on the by-law or resolution is defeated.

A by-law is necessary when legislation specifies that a by-law is required. Generally, by-laws are needed for matters that have a long-term or broad impact on the public such as when making laws for your municipality (e.g. zoning, animal control, etc.), setting property tax rates, or borrowing money.

Councils can use a by-law for other matters, even where a by-law is not required by *The Municipal Act*. For example, Council should use a by-law if making significant changes to how services will be delivered in the municipality, such as entering into a long-term contract for waste management.

Resolutions are a formal expression of Council's decisions. Resolutions usually deal with routine or administrative matters, such as approving monthly financial statements or accounts for payment, or buying or selling real estate.

By-Laws

By-laws are municipal laws that deal with matters that can have significant implications for people and property in the municipality.

Before passing a by-law, Council needs to understand the impact of the proposed by-law, not only on residents and property owners as a whole, but also on specific property owners, such as cottagers, farmers, and businesses.

Council should also consider the municipality's ability, as well as the resources required, to administer and enforce the by-law.

Municipalities enforce their by-laws in various ways, including by inspecting property, issuing compliance orders, issuing fines and taking a matter to court. Municipalities can often share the services of a by-law enforcement officer with a neighbouring municipality.

Procedures must be followed when passing a by-law to ensure the process is transparent and to provide opportunity for public debate. These procedures are:

- **Passed by a majority of council at a meeting that is open to the public.** By-laws can only be passed in an open meeting of council. The public can hear Council's debate and know Council's decision.
- **Given three separate “readings”.** Council must vote on the proposed by-law three different times, with an opportunity for Council discussion and debate between each vote. The public also has the opportunity to express their views before each vote.
- **At least two council meetings, with no more than two readings at the same meeting.** A minimum of two council meetings are required, with Council giving two readings at one meeting. Councils can consider the input from citizens before making a final decision.
- **Recorded vote on the third reading of a by-law.** The recorded vote ensures that the public is aware of how each council member voted on the matter.

Some by-laws have additional conditions that must be met before a by-law can be passed, such as giving public notice and holding a public hearing. Generally, these conditions are established to provide citizens with an additional opportunity to participate in the decision-making process on matters that may have a significant impact on them, such as proposed local improvements or special services that will increase property taxes.

Other by-laws, such as borrowing by-laws or by-laws that establish water rates, require approval of the Municipal Board or the Public Utilities Board before they can be passed. These Boards play a key role in protecting citizens' interest and ensuring the long-term financial sustainability of municipalities.

Resolutions

The procedure for passing a resolution is less formal than for passing a by-law. A resolution may be used for any matter, unless a by-law is specifically required. A resolution requires a mover, seconder and a vote.

Fair Decision-Making

As a Council, you want your decisions to be fair and to be seen as fair. Council establishes municipal policies to ensure that its decisions are implemented fairly and consistently and are understood by citizens.

Council, to make fair decisions, needs to take into account:

- **Relevant, clear criteria** – Council's policies should establish criteria that guide municipal decisions.

A snow clearing policy could establish the priority order for roads to be cleared (e.g. school bus routes and main roads are cleared first); the hours of operation for snow clearing equipment; and the level of service to be provided (height of windrows, when roads are sanded, etc.).

- **Consistency with other decisions made in similar situations** – Citizens expect that people in similar situations will be treated similarly. If someone is treated differently, it should be because their circumstances are different.

Decisions for maintenance work on municipal roads should be consistently applied and based on established policies.

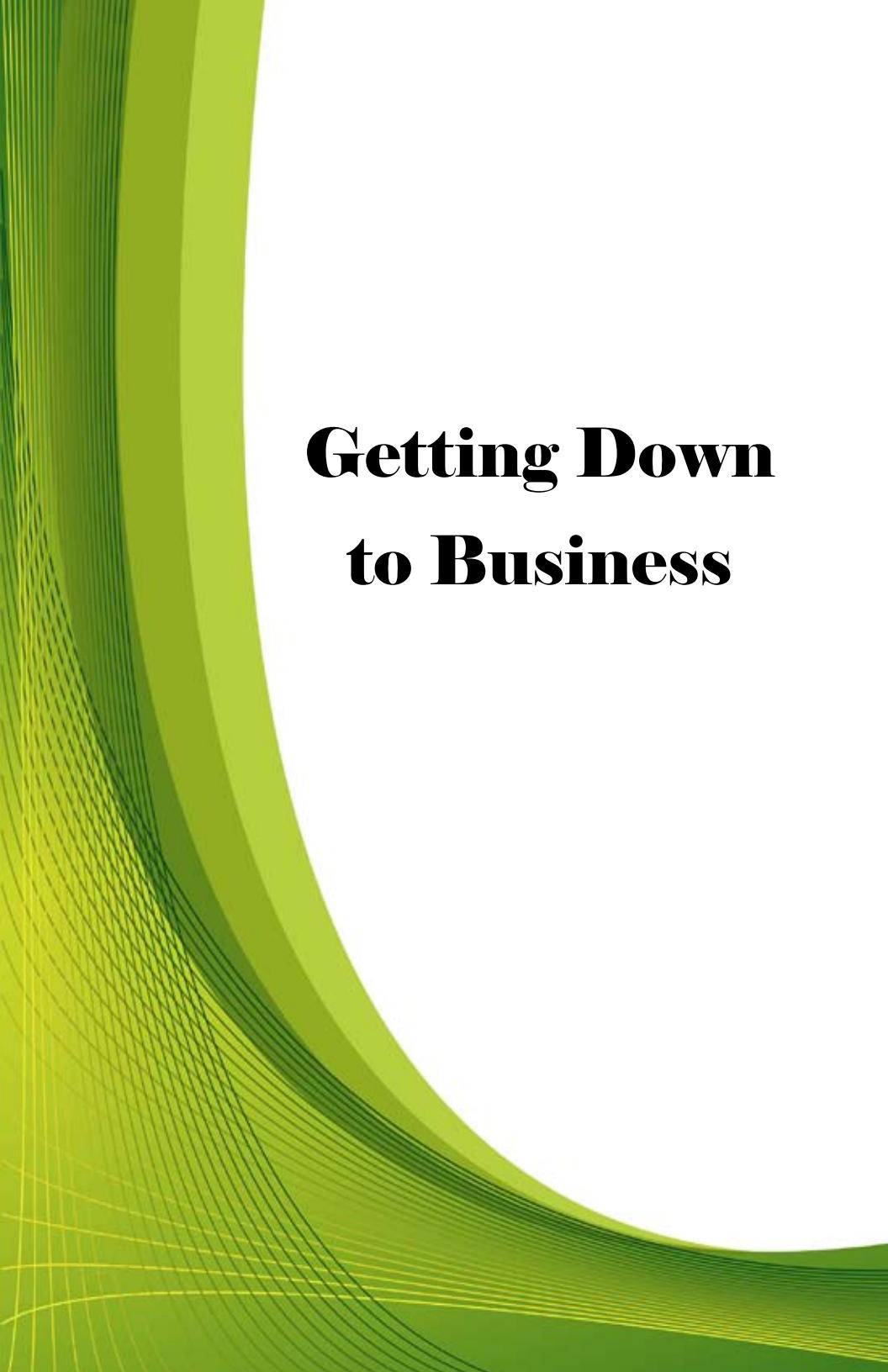
- **Reasonableness** – Decisions have to make sense to citizens and not pose any undue hardship on them.

An unsightly property by-law could establish a period of time within which a property owner would be ordered to clean up their property. The period of time must be reasonable to allow a person to be able to comply, but could set out circumstances where property owners could appeal to Council for an extension of time (e.g. if the property owner is out of town during the time period due to work or vacation).

The Manitoba Ombudsman has distributed a report called *Understanding Fairness* to all municipalities to assist councils in making fair decisions (see Appendix A).

Remember!

- ❖ **Citizens expect Council to make fair, objective decisions in the best interests of the municipality as a whole.**
 - ❖ **Council establishes policies to ensure that their decisions about municipal services and programs are fairly and consistently implemented.**
 - ❖ **Significant Council decisions should be made by by-law, to ensure there is opportunity for public debate and discussion.**
 - ❖ **A municipality opens itself up to a court challenge if Council does not follow legislated procedures.**
-



Getting Down to Business

GETTING DOWN TO BUSINESS

Council establishes the municipality's organizational structure and the procedures to be followed when conducting municipal business by by-law. These by-laws ensure that municipal business is undertaken in an open and transparent manner and citizens know how they can participate in municipal decision-making.

All Councils must have an:

- **Organizational By-law** that establishes the municipality's organizational structure. The by-law establishes council committees and their role and membership. The by-law also establishes how your deputy head of council is appointed, such as through a vote of council or appointed by the Mayor/Reeve.
- **Procedures By-law** that establishes council meeting and public hearing procedures. The by-law establishes the frequency, time and location of council meetings, how and when the public is to be notified of meetings and public hearings, and rules for how the public can participate at council meetings and at public hearings.

Councils are required to review their Organizational By-law and their Procedures By-law at least once in their term of office. Review your by-laws early in your term to ensure that your organizational structure and procedures meet your needs. Council should amend the by-laws if changes are required.

The Municipal Act Procedures Manual provides template Organizational and Procedures By-laws that municipalities may use as a basis to review their own by-laws.

Municipal Organization

Council establishes council committees in its Organizational By-law. Most municipalities establish committees to more effectively organize how Council undertakes its business.

Councils have considerable flexibility and may establish committees for any municipal purpose. There are two types of council committees:

- **Standing Committees** – are delegated certain powers and duties by Council to make recommendations on internal municipal policies. Examples include the Financial Management Committee or the Human Resource Committee.
- **Ad Hoc Committees** – are formed to investigate and report on particular matters. Once the committee has fulfilled its purpose the Committee is dissolved. Examples include an Arena Committee (to research a new facility) or a Centennial Committee (to plan a centennial celebration for the municipality).

Council appoints members to its committees by resolution. The Mayor/Reeve is automatically the Chair of all committees unless Council provides otherwise in its Organizational By-law.

Councils also have flexibility about who they appoint to committees. Committee members may be entirely from council, entirely of citizens, or a combination of council members and citizens. Including citizens on council committees is a good way to bring expertise and new perspectives to the table, as well as to involve the public in your municipality's decision-making process.

Committees can only make recommendations to Council, unless delegated specific authority by a by-law, such as delegating hiring authority to their Personnel Committee. Committees do not have authority to pass by-laws.

Committee meetings are open to the public. Committee meetings may only be closed to the public for specific reasons, outlined in the Council Meetings section of this guide.

Municipal Procedures

Council establishes its council meeting and public hearing rules in its Procedures By-law. This by-law ensures council members, municipal administration and the public will clearly know and understand how your municipality's business will be conducted, and citizens know how they can participate.

Your municipality's Procedures By-law is required to establish specific procedures rules under *The Municipal Act*. It is up to

Council to determine how those procedures will be implemented in the municipality.

Your Procedures By-law must include:

- **Timeframe for distributing meeting agendas to Council –** Adequate time prior to Council's meeting must be provided to ensure Council has an opportunity to review and make informed decisions and to ensure citizens are informed about the matters Council will be dealing with and can participate.
- **Day, time and place of regular meetings of Council –** Council meetings are usually held at regular intervals (monthly or bi-monthly in most municipalities), and at a time and in a location to encourage public attendance. Many municipalities hold council meetings in the evening, so that citizens who work during the day can attend. As well, Council meetings should be held in a location that is accessible to persons with disabilities.
- **Type and amount of notice of regular meetings of Council –** Notice of regular meetings should be given in enough time to ensure citizens can determine if they wish to attend and participate. Some municipalities provide the schedule of a full year's regular meetings in advance; others choose to give notice one or two weeks in advance depending on the frequency of their regular meetings.

Council should ensure that the type of notice used is effective in ensuring citizens know about council meetings. Many municipalities combine several approaches when giving notice of regular meetings, including advertising in the local media, on the municipality's website, posting in the municipal office or other prominent places in the municipality, etc.
- **Procedure to be followed and the type and amount of notice required to change a regular meeting –** Notice is required to ensure citizens are aware of a change to a regularly scheduled meeting.
- **Rules of conduct at Council meetings and public hearings –** Established rules of conduct ensure that council business is dealt with efficiently and effectively. Rules should be established for:

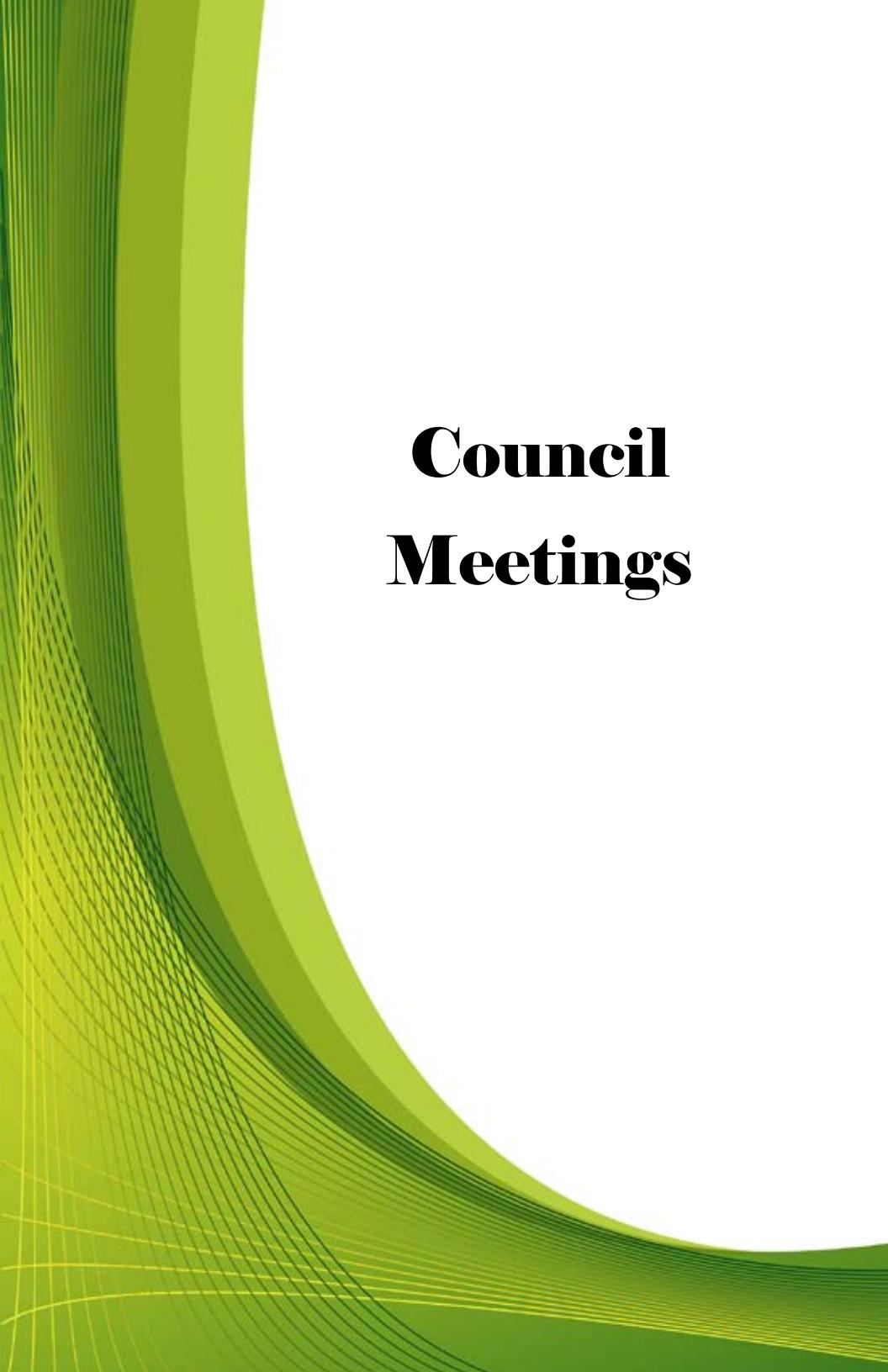
- an order of business on the meeting agenda
 - points of order and how they are to be addressed by the Chair
 - procedure to follow when two or more members address the Chair at the same time
 - who may speak to a question before Council, when they may speak, and for how long
 - how the Chair will deal with disturbances caused by a council member or a citizen at a meeting. Disturbances at a meeting are disrespectful and unacceptable.
- **Rules for public participation (e.g. citizens, stakeholder groups, and media) at Council meetings and public hearings –** Rules are established to ensure public participation is orderly. Rules should be established for:
- when delegations may register to be heard by council
 - a time limit for speaking and for extending the time limit
 - when petitions may be received
 - the maximum number of people allowed in council chambers
 - audio taping or video recording meetings by the media or citizens. Some municipalities have implemented policies allowing audio taping or video recording of meetings, however it is often limited to the media or the municipality itself. Taping by an individual may raise privacy concerns for others and may impede public participation.
- **Procedures for appointing a member of Council to act as the head of council in lieu of the Mayor/Reeve or Deputy Head of Council –** These procedures ensure council business continues to be dealt with in the event the Mayor/Reeve is absent.
- **Type and amount of notice for special meetings of Council called by the Mayor/Reeve –** Sometimes an additional or “special” meeting is required between regular meetings when important or unforeseen business arises. All council members must be given specific notice of a special meeting, to ensure they can attend and participate.

Provision should also be made to give public notice of a special meeting. As with regular meetings, Council should ensure that the type of notice is effective in ensuring citizens are aware of when a special meeting is taking place.

- **Time within which a special meeting of council must be called by the Mayor/Reeve if requested** – Procedures ensure that special meetings take place in a timely way, when they are required. If the head of council does not call the special meeting with the timeframe, the CAO must call the meeting.
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Remember!

- ❖ Municipalities are required by legislation to have both an Organizational By-law and a Procedures By-law to ensure business is undertaken openly and transparently and citizens know how they can participate.
 - ❖ Councils must operate according to their Organizational By-law and their Procedures By-law.
 - ❖ Council must review their Organizational By-law and Procedures By-law at least once in the term of office, but should review it early in the term. Make it a priority to amend the by-laws if any changes are needed.
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Council Meetings

COUNCIL MEETINGS

Councils are required to conduct their business in meetings that are open to the public. This ensures that the public can hear Council's debate and know Council's decisions. *The Municipal Act* allows councils to meet in a closed or "in camera" meeting only in very specific situations.

Councils are required to hold regular council meetings, as established in the municipality's Procedures By-law. Councils can also hold special meetings, which are additional meetings scheduled in between regular meetings. Special meetings are generally held when important or unforeseen business arises that needs to be dealt with before the next regular meeting.

Council members have a legislated responsibility to attend council meetings. A council member is automatically disqualified from council, and must resign their seat, if they are absent from three consecutive council meetings without the permission of Council.

Council meetings may be conducted electronically, such as over the phone or through video-conferencing. This provides an option to Councils to accommodate council members who, due to work or other responsibilities, are unable to attend the meeting in person. *The Municipal Act* requires that a meeting conducted electronically must allow members of council to hear and speak to each other and enable the public to hear Council's discussion.

Councils may also establish rules in its Procedures By-law for when a member may participate electronically, such as requiring advance approval from Council.

Quorum

Council meetings require a majority (50% plus one or a "quorum") of Council to be present before a meeting convenes and at all times during the meeting. There are exceptions to requirements for quorum, in the event a member declares a conflict of interest and withdraws from a meeting.

A council member who participates electronically is considered to be present at the meeting.

Open Meetings

Municipalities, like all governments, are expected to operate in a transparent manner. Council business must be conducted in an open meeting that can be attended by the public.

Council decisions (by-laws and resolutions) can only be passed at an open meeting. No resolutions or by-laws may be passed in a closed meeting.

Closed or “in camera” meetings are allowed only in specific situations. *The Municipal Act* is very specific about the topics that Council may discuss in a closed meeting.

A council meeting can only be closed to discuss:

- personnel matters
- preliminary discussions on matters that if discussed in public could affect the municipality’s ability to carry it out (e.g. early discussions about selling surplus municipal land)
- unresolved legal matters
- an investigation being conducted under the authority of a by-law (e.g. investigation of an unsafe property)
- issues that deal with security of documents or property (e.g. establishing an alarm system for municipal facilities)
- a report of the Ombudsman, where the Ombudsman requires the report to be considered at a closed meeting

A Council may only exclude the public and media from a meeting by passing a resolution to meet as a committee of the whole in a closed meeting. The resolution must state the topic of the matter to be discussed in the closed meeting.

All council members have a legislated duty to keep confidential a matter that is discussed at a meeting that has been closed to the public. A breach of this duty is grounds for disqualification from office.

Meeting Agenda

Council business is organized through development of a formal agenda. The agenda ensures meetings are held in an efficient and effective manner.

Council establishes the agenda order in its Procedures By-law. The agenda generally puts the most important items at the beginning of the agenda, so that Council focuses on these matters first. Putting the most important council business first also respects the public's right to attend and participate in the council meeting.

You should expect your CAO to provide you with the agenda and supporting documents for the agenda items, before each Council meeting and in a timely way, so that you can participate in the debate and be prepared to make informed decisions.

Voting

All council members, including the Mayor/Reeve, are entitled to vote and should vote unless they declare that they have a pecuniary (financial) interest in the matter (discussed under the Conflict of Interest section in this Guide).

A recorded vote is required on the third reading of a by-law. However, any council member may request a recorded vote in accordance with the Procedures By-law, before the vote is taken on a resolution or the first or second reading of a by-law. The meeting minutes then must show the names of the members present and how they voted. When there is a tie vote, the vote on the resolution or by-law is defeated.

Meeting Minutes

Council meeting minutes are the official public record of council's decisions and so it is very important that the minutes accurately reflect Council's decisions.

Your CAO is responsible to ensure the minutes of all Council and Committee meetings are taken. Your CAO will prepare draft meeting minutes, and will usually have them available within a few days after the meeting. Review them carefully, as Council will approve them at the next council meeting. Council has the opportunity to change the meeting minutes if they do not accurately reflect the decisions made.

Meeting minutes must be made available to the public. Many municipalities routinely post meeting minutes on their websites, make them available in the municipal office, and provide them to the local newspaper.

Meeting minutes are limited to:

- noting attendance
- resolutions
- outcomes of votes
- recorded votes
- reports of committees
- a brief note on presentations made by delegations

Council members should not ask to have comments or observations recorded in the minutes.

Remember!

- ❖ All Council meetings are open to the public. Meetings can be closed to the public only in limited circumstances.
 - ❖ All council members are expected to attend, participate, and vote at council meetings. You may be disqualified from council if you miss three consecutive regular meetings without Council's permission.
 - ❖ Meeting minutes are an official public record of Council decisions – make sure they are accurate.
-

Conflict of Interest

CONFLICT OF INTEREST

As a member of council, you are in a position of trust. The public expects you to act in the best interests of the municipality.

The Municipal Council Conflict of Interest Act sets a standard of good conduct for council members. The Act defines situations when an individual council member's personal interest or the interest of their immediate family (spouse or dependent child) conflict with the broader municipal interest. It also imposes consequences on council members when they put their personal interests first.

The Act also requires all council members to annually file a Statement of Assets and Interests. The requirement to list your assets and interests in the Statement is a critical part of being accountable to your citizens. There is no requirement to disclose the value of your assets and interests.

Understanding the rules of the Act allows you to perform your duties without fear of unintentionally becoming involved in a conflict of interest situation.

Only the Court of Queen's Bench can determine if a council member has a conflict of interest. An elector or a council can apply to the court if they believe that a council member has violated *The Municipal Council Conflict of Interest Act*. The court will hear the evidence and will make a decision. If the court decides that the member of council violated the Act the member could be disqualified from council and would have to immediately resign.

Frequently asked questions about conflict of interest are answered in Appendix C.

Types of Conflict of Interest

Council members are in conflict if they:

- 1. Participate in a matter before Council where they, or their spouse or dependent child, have a direct or indirect pecuniary (financial) interest** – Council members are required to disclose the interest (e.g. if a member owns a company that the municipality is considering doing business with), withdraw from the meeting without voting and not participate in the discussion.
- 2. Use “insider” information that they have acquired in the performance of their official duties.** Members of council cannot use information that is not available to the public for personal gain or the gain of any other person (e.g. passing on information obtained through internal discussions about the value of a municipal property anticipated to be sold).
- 3. Receive compensation from any person, business or organization** for the services they provide as a council member, or receive compensation to influence another council member (e.g. receive payment from a private individual for making a decision or influencing a decision in your capacity as member of the Board of Revision).
- 4. Use their influence as a council member to influence the municipality to enter into a contract or transaction** where they or their immediate family member (spouse or dependent child) have a direct or indirect pecuniary (financial) interest (e.g. recommending your spouse’s company to do work for the municipality).

Statement of Assets and Interests

All Council members must annually file a Statement of Assets and Interests with their CAO, no later than November 30 each year. The statement is a public document and can be viewed by the public at any time during municipal office hours. Your statement cannot be photocopied or publically distributed, for example faxed, e-mailed, etc. Public access to the statement enables citizens to assess if they believe a council member may have a conflict of interest.

The Statement of Assets and Interests lists your real estate holdings in the municipality (exclusive of your principal residence) and any personal financial interests that you, or your immediate family member (spouse or dependent child) have. Only the nature of the financial interest must be disclosed, not the financial details such as the amount of your salary, the value of your holdings, number of shares you own, etc.

It is your responsibility to keep your Statement of Assets and Interests up to date. If you acquire or dispose of any assets or interests after filing the original statement, you must file another statement disclosing the new asset or interest with your CAO within 30 days.

Disclosure at Meetings

The Act sets out the procedures you must follow if a matter in which you or your immediate family member (spouse or dependent child) have a pecuniary interest comes before any meeting in which you are taking part in your capacity as a member of council, including Council meetings, sittings of a Board of Revision, etc.

Your interest may be direct, for example you are a business owner and Council is making a zoning decision that affects your business, or indirect, for example your spouse is employed by a business that your municipality is considering awarding a contract to.

Sometimes a pecuniary interest is not very clear. The first step is to ask yourself whether you or your spouse or your dependent child stand to gain or lose financially by Council's decision.

If you believe you have a pecuniary interest:

- **You must disclose the interest and its general nature before the matter is discussed at the meeting.** Disclosures may be oral or given in writing. However, a written disclosure, signed by the council and filed with the CAO, will likely go a long way in satisfying the public that you complied with the Act.

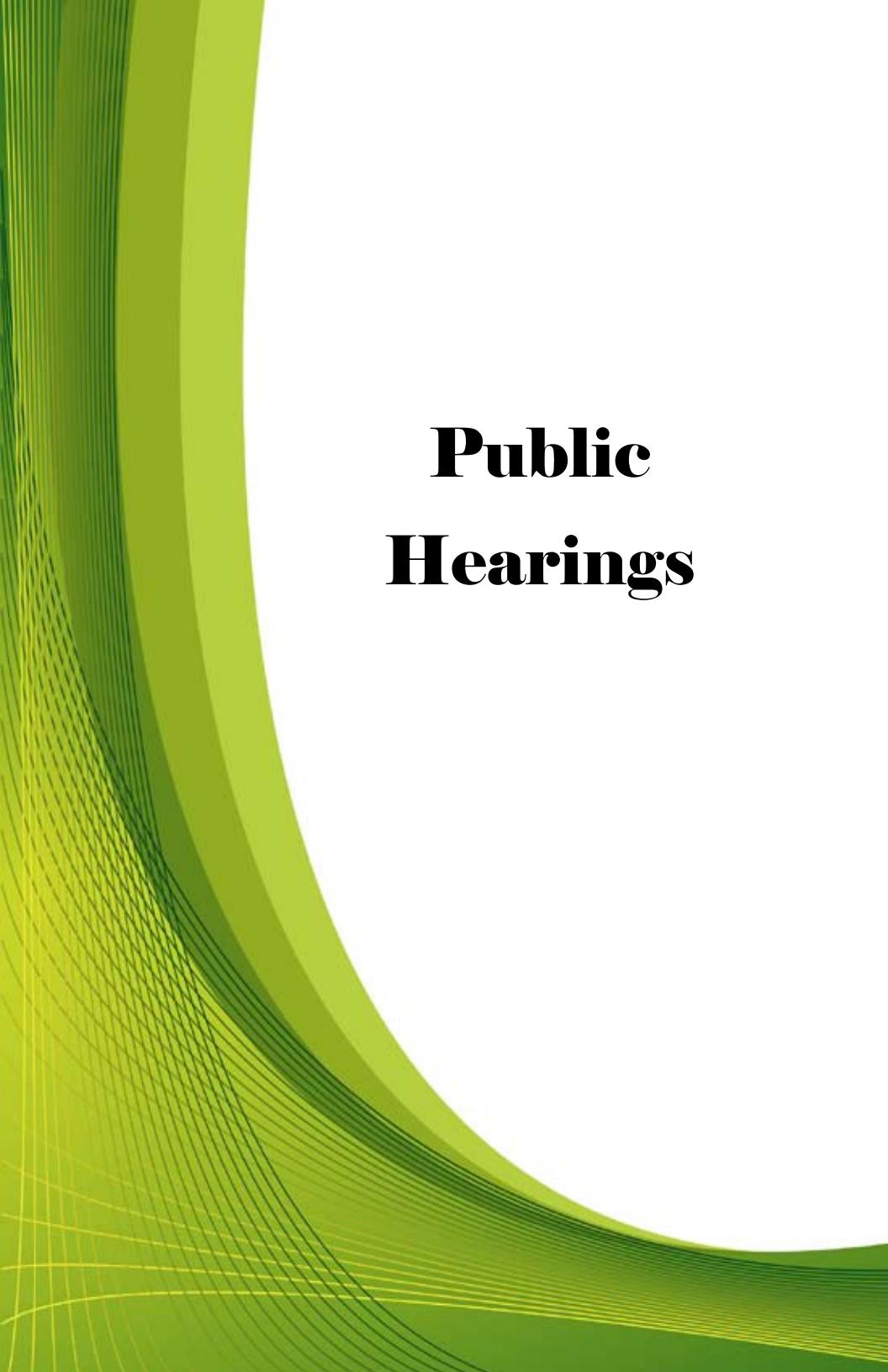
- **You must immediately withdraw from the meeting without voting or participating in the discussion on the matter.** Your withdrawal must be recorded in the meeting minutes. The record of your disclosure and withdrawal is available to the public.
- **You must not attempt to influence the decision on the matter.** You should leave the room when council debates the matter. Your presence in the room, your body language, or even questions you might ask during Council's debate may influence Council's decision. When the matter is concluded, you may return to the room and Council table.

You must disclose your interest each and every time the matter in which you have a pecuniary interest is brought before Council. Your disclosure of an interest in one meeting does not carry over to other meetings or last for your full term on council.

If you are absent from a council meeting at which a matter you have an interest in is discussed, you must disclose your interest at the next council meeting.

Remember!

- ❖ **Council members must make decisions in the best interest of the municipality first and foremost.**
 - ❖ **Only you can determine when you have a pecuniary interest in a matter. Your Council or CAO cannot determine that for you.**
 - ❖ **If you are in doubt as to whether you have a pecuniary interest, contact your lawyer. The consequences of violating conflict of interest rules can be severe.**
 - ❖ **The court ultimately determines if you have a conflict of interest – not the CAO, another council member, or a citizen.**
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Public Hearings

PUBLIC HEARINGS

Council must hold a public hearing to obtain public input on matters that have a significant impact on the citizens and property owners in the municipality, under *The Municipal Act*.

Additionally, Council can hold a public hearing or a “town hall” meeting on any other matter it chooses, even where a public hearing is not required by legislation. A public meeting is always a good idea when Council is considering major changes that have a direct impact on citizens, for example a new way of delivering a municipal service or to gauge public interest in a new capital project such as a recreation centre.

Requirements for public hearings recognize the important role that the public plays in the decision-making process. The public hearing enables Council to provide comprehensive information on a proposal to citizens and obtain their input on the proposal before making a final decision. Knowing the views of the public will assist Council to make the best possible decision on behalf of all citizens and ratepayers in the municipality.

Examples of when public hearings are required include:

- presentation of the annual financial plan of the municipality
- revisions to the operating budget that increases transfers from surplus and reserves or tax revenue, or increases estimates in the capital budget
- long-term borrowing by the municipality for capital projects (if not included in the annual financial plan of the municipality)
- proposal to close a municipal road
- proposal for local improvements / special services
- proposal to adopt or amend a development plan or zoning by-law
- application for variance and conditional uses, under a zoning by-law

Your Role at Public Hearings

All council members are required by *The Municipal Act* to attend public hearings unless they are excused by council, are ill or have declared a conflict of interest in a matter before Council. Your attendance at a public hearing will ensure that you understand the public's view on the matter and are able to make informed decisions.

To be prepared for a public hearing, Council should:

- Ask the CAO to review the information about the proposal with you, as well as any other important information so that you are sure of your knowledge about the issue.
- Decide who will present the information and answer questions from the public and media.
- Review the public hearing procedures established in your Procedures By-law, so you are comfortable with how the hearing will unfold.

Council members must be respectful of the views of all presenters, even when they disagree with those views. It is important to listen to the views of your citizens.

Encouraging Attendance at Public Hearings

Council can take steps to encourage citizens' attendance and participation at public hearings. Your CAO is responsible to ensure that citizens are provided with advance notice as required under *The Municipal Act*, and are aware of the issues to be discussed at public hearings.

Strategies to encourage attendance at public hearings include:

- **Advertise the public hearing well in advance.** Minimum requirements to advertise a public hearing are set out in legislation, but municipalities can also do additional advertising to increase public awareness and encourage attendance.

Additional advertising can be through the local newspaper, the municipality's website or by posting notices in frequently visited public places (e.g. the library, recreation centre).

Distributing newsletters to property owners and inserts in water bills are other options.

The notice should clearly state how the public can participate, for example by making a presentation to Council.

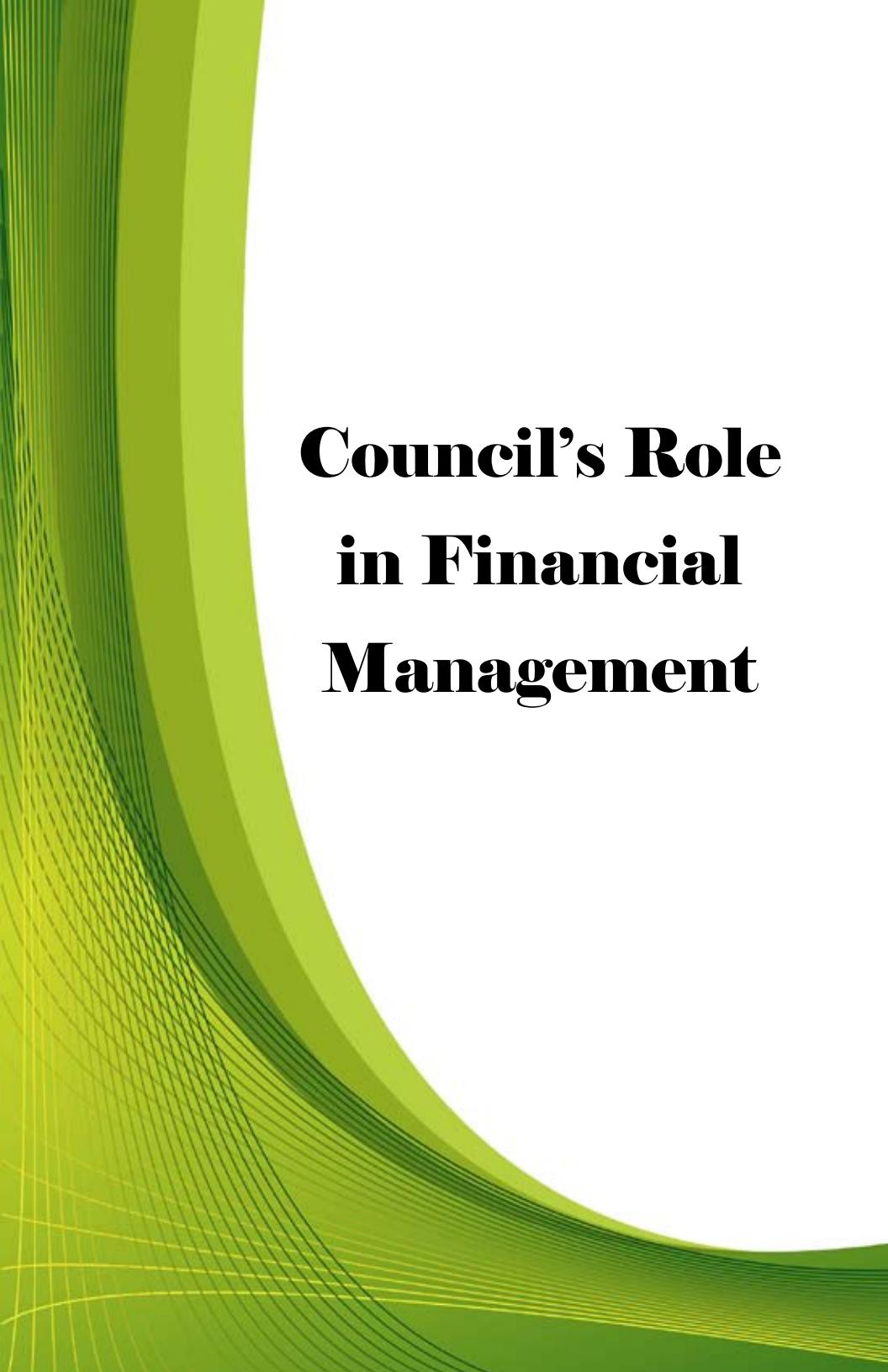
- **Schedule the public hearing in the evening**, so more people are likely to attend. Scheduling a hearing during the day, when many people work, will mean that many cannot attend the hearing.
- **Hold the public hearing at a location that will accommodate a large group and is easily accessible**, such as a community hall. Remember to make sure that the facility is accessible to persons with disabilities so everyone in your community has the opportunity to participate.
- **Ensure that a detailed information package is available well in advance**, so citizens have ample time to review the package before the hearing. Council should ensure that citizens clearly and fully understand the proposal being considered by Council, so that they can ask meaningful questions and provide Council with informed comments.

At a minimum, an information package should include information about the reason for Council's proposal, the cost of the proposal, options that have been considered by Council, and the impact on residents and property owners as a whole, as well as on specific property owners, such as cottagers, farmers, and businesses, etc.

- **Make the presentation interesting and understandable** by using visual aids such as graphs, charts and PowerPoint presentations.

Remember!

- ❖ Public input is important to the decision-making process.
 - ❖ Respect the opinions of others. Listen to all views that are presented.
 - ❖ Council must hold public hearings for some matters, but may hold a public meeting for any matter.
 - ❖ Hold public hearings at a time, place and location to encourage public attendance.
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Council's Role in Financial Management

COUNCIL'S ROLE IN FINANCIAL MANAGEMENT

Council has overall accountability for the financial position of the municipality. Council must ensure that the municipality's finances are responsibly managed so that service and program priorities can continue to be delivered at a reasonable cost.

Council achieves this by planning and budgeting, monitoring the financial position of the municipality throughout the year, and reporting on the municipality's financial position at the end of the year.

As a council member, you are not expected to be an accountant or an auditor. Your CAO will provide you with the information you need.

Annual Financial Plan (Budget)

The annual financial plan, or budget, is one of Council's most important policy decisions.

Through the annual financial plan, Council determines the services and programs that will be delivered to residents and property owners during the year, the level of those services and programs, and how they will be paid for, including through property taxes. In making these decisions, Council must consider the impact to residents and property owners as a whole, as well as on specific property owners such as cottagers, farmers, and businesses.

Your CAO will prepare a draft annual financial plan and provide information for Council's review, to support Council's budget discussions.

It is important to begin the budget process early in the year – in January or February. Your municipality gets its authority to deliver services and programs and levy property taxes for the entire year through its annual financial plan and tax levy by-law. Starting early recognizes that the budget process takes time to complete.

Beginning the budget process early in the year ensures that there is adequate time to develop the financial plan, prepare comprehensive budget information for the public and hold a public hearing on the plan as required by legislation. Following the public hearing, Council may approve the plan as proposed, or amend it based on public feedback. Council must hold a second public hearing if the plan is amended.

Council must pass its tax levy by-law no later than May 15. Council must file a copy of its approved annual financial plan with the Minister of Local Government by May 15, and a copy of its tax levy by-law by June 15.

The annual financial plan is comprised of:

- **Operating Budget** – The operating budget establishes estimated expenditures for each service and program (eg. roads, recreation, fire protection, and administration) for the year, and the revenues necessary to fund these expenditures, including through property taxes. The operating budget compares the projected costs of services and programs to the actual costs from the previous year.

Municipalities have access to a diverse range of revenue sources to pay for their services and programs. Important revenue sources include property taxes, user fees and charges (eg. permits, licenses etc.), transfers from reserves and nominal surplus, conditional provincial grants (eg. infrastructure grants), unconditional provincial grants (funded through provincial revenue sharing), grants from the federal government, as well as grants from other organizations (eg. community foundations).

Municipalities are required to pass a balanced operating budget, unless approval is obtained from the Minister of Local Government before Council approves the budget. A “deficit operating budget” is rare, and should only be used in extraordinary circumstances.

- **Capital Budget** – The capital budget establishes the estimated expenditures for the year on capital assets such as equipment, buildings, bridges, and water and sewer treatment facilities; as well as how they will be paid for.

Capital projects can be funded through:

- **General borrowing** – a single tax rate is applied to all taxable properties in the municipality to repay the funds borrowed.
- **Local improvement plan** – only properties in the municipality that benefit from the capital project repay the funds borrowed, including exempt properties. Costs can be distributed on the basis of taxable assessment, area of land, per parcel or frontage.
A local improvement plan can include all properties in the municipality, or only in part of the municipality.
- **Other sources** – including the current year's operations, services, etc.

- **Five-year Capital Expenditure Program** – The five-year capital expenditure program establishes the long-term capital needs of the municipality. Council determines the timing of projects, their costs, and how they are intended to be funded.

Many municipalities in practice prepare longer term capital plans – 10 years or more – to manage investments in maintenance and replacement of their capital assets. This ensures that the municipality's capital assets are safe, in good working order and meet the municipality's needs. Councils can plan for future capital expenditures, while managing costs and the impact to residents and property owners over time.

All municipalities have a complete listing of their capital assets, including the asset's net value, as part of their year-end financial statements (tangible capital assets). This information can be used for asset management, which can improve the long-term capital planning process.

Critical Budget Decisions

Councils should ask the following when making budget decisions:

- **Do proposed expenditures reflect Council's priorities?** Is the money being spent to achieve Council's goals and objectives?

Does current spending match priorities? What percent of the total budget is being spent on specific expenditures? Does this make sense?

- **Are services affordable and delivered efficiently and effectively?** Are residents and property owners getting value for their money? Is the most value being achieved from tax dollars or are there alternative ways to deliver services? How do your municipality's expenditures for the service compare to similar, neighbouring municipalities?
- **Do tax levels reflect the ability and willingness of your residents and property owners to pay?** What is the economic circumstance of residents? What is the impact on property owners as a whole or on specific property owners (eg. cottagers, farmers, businesses, low value properties)? Has the municipality's tax rate been increasing? How does your municipality's tax rate compare to similar, neighbouring municipalities?
- **Are services sustainable in the foreseeable future?** Can the type and level of services be maintained in view of the economic and population trends in your municipality, without unreasonable tax increases? Are the costs of delivering the service, and therefore taxes, increasing? Are there other ways of doing business that could be considered? If reserve or surplus funds are being used to finance expenditures, what is the longer-term impact on the municipality's financial position?

Taxation

Property taxes are the main source of revenue for most municipalities. Property taxes are raised by applying a tax (mill) rate to the taxable assessment of the properties in your municipality. Council establishes the tax rate, by by-law, after approving the municipality's annual financial plan, to raise the necessary revenue to pay for services and programs. A single rate, called the general municipal mill rate, is applied to all properties.

However, many municipalities are becoming increasingly diverse, and are comprised of different types of property owners, such as farmers, cottagers, seniors, businesses, etc. Often these property owners want and receive different types and levels of municipal services and programs, such as garbage collection for the urban area of a municipality but not for the rural area.

Councils have options to ensure that the costs of municipal services are fairly distributed amongst residents and property owners. Key options include:

- **Special service taxes** – only property owners that receive a specific service, such as garbage pick-up, street lighting, etc. pay for the service, including properties that are exempt from property tax such as hospitals, schools and churches.

Costs can be distributed on the basis of taxable assessment, area of land, per parcel or frontage.

Municipal Board approval is required to levy special service taxes, as it results in additional taxes for some property owners.

- **User fees and charges** – only users of a specific service or program pay for them.

Council has discretion to determine the services for which it will charge a fee, the amount of the fee, the basis for calculating the fee and who is required to pay. Many municipalities apply user fees or charges for licenses, permits, use of municipal facilities (eg. recreation centre programs), etc. Fees and charges are established by by-law.

Capital Projects and Borrowing

Municipalities are increasingly planning for and undertaking large, expensive capital projects.

The magnitude and costs of these projects usually generate public interest in the municipality's capital plan. Citizens want to understand what Council is proposing and why, and how the financing of a project will affect them.

Involving citizens from the outset, by making available comprehensive information about Council's proposals is important. Information should include the total cost of the project, whether there are other sources of funding for the project, how the municipality intends to pay for its share of the costs (including through borrowing, etc.), and the impact on property taxes for property owners as a whole as well as for specific property owners.

Borrowing is an increasingly important source of financing for large capital projects. Long-term borrowing enables a municipality to pay for capital projects and equipment over a period of years, often matching the term of the borrowing with the estimated useful life of the capital asset. In this way those who benefit from the capital asset are the ones who pay for it.

All municipal borrowing must be authorized by by-law. The Municipal Board must approve a borrowing by-law before third reading. The requirement for Municipal Board approval is an important additional step in the borrowing process in considering the public's interests and the long-term financial sustainability of municipalities.

The Municipal Board, when considering the by-law, takes into account the debt capacity of the municipality to determine the total amount that a municipality may borrow. The Board has established guidelines to measure the amount of money that a municipality can borrow, taking into account their ability to repay the debt. The guidelines for borrowing are 7% of the municipality's taxable assessment and 20% of the municipality's revenue.

Once a borrowing by-law is approved the debt repayment obligation must be reflected in the municipality's financial plan.

Many municipalities have partnered on infrastructure projects such as recreation, waste management, and sewer and water treatment facilities. Municipalities can often save money, as well as increase the level and quality of services, by partnering with another municipality.

Examples of where municipalities have partnered can be found on the Association of Manitoba Municipalities website, at www.amm.mb.ca/res_tools.html.

Public Hearing on Your Financial Plan

Council is required to hold a public hearing on its proposed financial plan, before it can adopt the plan and pass its tax levy by-law. Comprehensive budget information should also be available to the public to assist citizens understand what is included in the plan.

The public hearing provides Council the opportunity to:

- Present Council's short and long-term objectives and goals.
- Present the financial position of the municipality, including its expenditure priorities (eg. municipal roads, waste management, fire protection).
- Present the operating and capital budget proposals, which outline where money is being spent (eg. fire protection, drainage, roads, recreation, administration) and what percentage of the municipality's budget is being spent on each.
- Outline the tax impacts of your budget decisions on individual property owners. Graphs and charts and comparisons to previous years are always helpful.

Monitoring Municipal Finances

Council monitors the financial affairs of the municipality to evaluate its financial position throughout the year against the approved annual financial plan. This allows Council to take action in response to changing priorities, unanticipated events or over-expenditures.

Your CAO should provide you with regular, easily understandable, financial reports on a monthly or quarterly basis. In addition, your CAO should provide you with explanations of large differences in budgeted expenditures compared to actual expenditures, at that point in time.

Annual Financial Reporting

The annual audit of the municipality's year-end financial statements is Council's most important tool for reporting on the financial position of the municipality. The audited statements ensure accountability and transparency, providing citizens with the opportunity to compare actual year-end results with the annual financial plan.

Council must appoint a qualified auditor (defined in legislation as a chartered accountant, certified general accountant or certified management accountant) each year to report to council on the financial affairs of the municipality for the preceding year. Your auditor must be able to meet your municipality's terms and deadlines for submitting the audit. Your auditor must submit the audit to Council by June 30 of the following year, as well as send a copy to the Minister of Local Government.

The auditor also prepares a supplementary report along with your audited financial statement. The supplementary report tells Council whether the auditor came across any problems with the municipality's accounting procedures or internal controls, whether any funds were spent without proper authority, whether there are any issues that Council should be aware of, and provides recommendations for Council actions.

Council may wish to invite the auditor to a council meeting to discuss the audited financial statement and the supplementary report, after they are submitted. Council is required by legislation to address matters identified by the auditor and any recommendations made by the auditor.

The municipality must advertise that the audited financial statements and supplementary report are available to the public at the municipal office. Many municipalities post their financial statements on their websites so they are easily accessible to citizens.

Councils will notice a difference between the year-end results reported in their audited financial statements and the results from the financial plan. Municipalities' audited financial statements must now be prepared according to generally accepted accounting principles (GAAP) established by the Public Sector Accounting Board (PSAB). The annual financial plan, however, continues to be prepared on a modified cash basis which is different than PSAB reporting requirements.

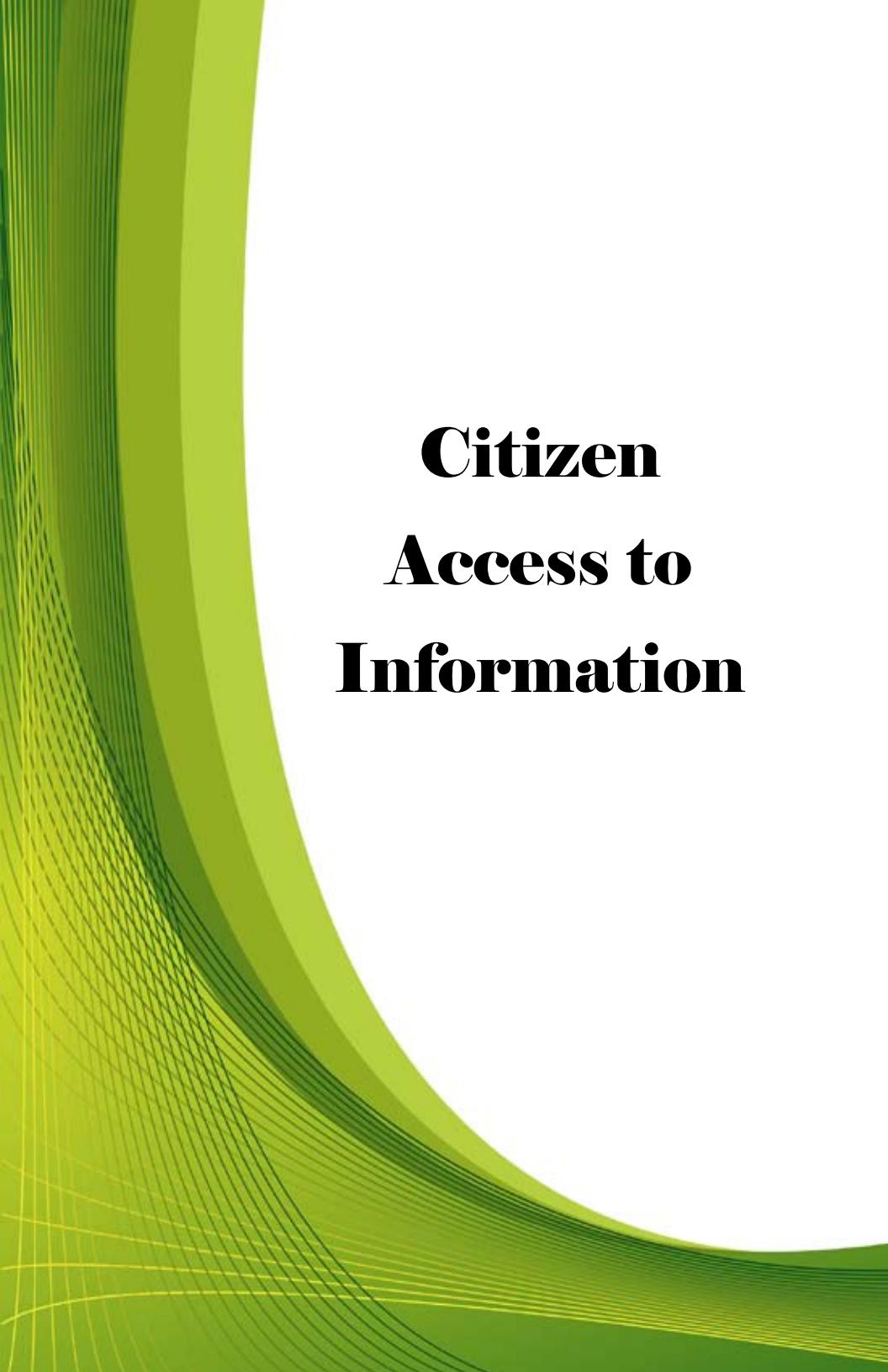
PSAB statements enhance transparency and accountability by providing Council with a complete picture of the municipality's financial position:

- The financial statements include municipal organizations such as libraries, airports, planning districts, utilities and handi-transit operations.
- The audited statement recognizes the financial effects of transactions in the period in which they occur, regardless of whether cash has been received or paid (e.g., vacation pay owing to employees, sick leave, etc.). The most significant of these is the amortization of capital assets.

The cost of capital assets is a key component in the delivery of municipal services and having this information available allows Council to plan and make better decisions about replacing their capital assets.

Remember!

- ❖ **Council is responsible for the financial position of the municipality.**
 - ❖ **The annual financial plan should reflect Council's service and program priorities taking into account the needs of all residents and property owners, and the impact on them.**
 - ❖ **Monitor the financial affairs of your municipality to ensure you are staying on course.**
 - ❖ **Make sure your annual audited financial statements are received on time and made available to the public.**
-



Citizen Access to Information

CITIZEN ACCESS TO INFORMATION

Citizens need access to information to understand how their municipalities operate – to know about the decisions of council, to be aware of the services and programs available and how they are delivered, and to understand how they can get answers to their questions.

Most municipal documents should be available to the public as a matter of course. Many municipalities have established access to information policies that list the documents that citizens can immediately obtain if desired.

Citizens can also request that the municipality provide access to municipal documents by filing a request under *The Freedom of Information and Protection of Privacy Act* (FIPPA). This is a formal process that may not be necessary if Council has a clear and comprehensive access to information policy.

Under FIPPA, the municipality is required to provide any citizen access to documents, unless there is a clear reason for keeping them confidential or they contain personal information (eg. contain information about an ongoing legal matter, personnel records, etc.).

Citizens have the right to complain to the Ombudsman if the municipality denies access to a municipal document. The Ombudsman, after an investigation, may recommend that the municipality provide the document. Municipalities are expected to comply with the Ombudsman's recommendations.

Required Access

Citizens have immediate access to certain documents under municipal legislation:

- assessment rolls
- annual financial plan (budgets)
- financial statements
- reports of the municipal auditor

- minutes of council and committee meetings (including Local Urban District meeting minutes), held in public
- by-laws and resolutions of council and resolutions of committees of council (including Local Urban District committee resolutions)
- an Election Finance Statement filed by a registered candidate in an election
- a council member's Statement of Assets and Interests (*The Municipal Council Conflict of Interest Act*)
- a council member's Record of Disclosure during a meeting (*The Municipal Council Conflict of Interest Act*)
- a report of the Ombudsman received by council, where required (*The Ombudsman Act*)

Additional Access

Council should establish a comprehensive access to information policy to ensure other municipal documents are readily available to citizens. Documents that should be included under the policy and provided to citizens as a matter of course include:

- council member indemnity and expense claim forms
- invoices for accounts payable
- tender documents once awarded
- development agreements
- conditional use permits and variation orders

Any document that is presented at an open council meeting should be available to the public, as a general rule.

The Freedom of Information and Protection of Privacy Act (FIPPA)

FIPPA provides citizens with the right to formally request access to records by filing an access to information request. The municipality must respond to the request within 30 days.

Each municipal council must designate a person as the head of the public body. The head is responsible for all municipal decisions related to FIPPA taken by the municipality. The head is usually the Mayor/Reeve, or council as a whole.

The head of the public body may delegate responsibility to a senior staff person, called the Access and Privacy Officer. Often the municipality's CAO is delegated. The Access and Privacy Officer makes the final decisions of the municipality regarding disclosure of information, and is responsible to ensure that personal information is managed as required by the legislation.

A citizen who is denied access to a municipal document by the municipality can file a complaint with the Ombudsman. The Ombudsman may recommend that the municipality provide the document. Municipalities are expected to comply with the Ombudsman's recommendations.

If a municipality does not act on a recommendation made by the Ombudsman, the Ombudsman may refer the matter to the Information and Privacy Adjudicator for review. The Adjudicator has the power to make various orders, such as requiring a municipality to give a citizen access to all or part of the requested information, requesting that a municipality reconsider its decision, or confirming a municipality's access decision.

Remember!

- ❖ **Most municipal documents should be publicly available as a matter of course.**
 - ❖ **Make the process to access information easier, by having key documents readily available in the municipal office, or by posting them on your municipality's website.**
 - ❖ **Formal access to information requests under FIPPA should be an exception if your municipality adopts an access to information policy that provides access to a broad range of municipal documents.**
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Citizen Complaints

CITIZEN COMPLAINTS

Citizens have the ability to take their complaints further if they do not believe that the municipality has satisfactorily resolved them.

Citizens may file a complaint with the Ombudsman, who has authority to investigate complaints relating to administrative actions of the municipality or a municipal employee.

Citizens always have recourse to challenge a municipality before the court, if they believe that the municipality is acting outside its legal authority.

Ombudsman

The Ombudsman is an independent body, arm's length from government. The Ombudsman's mandate is to conduct an impartial and objective investigation of complaints about whether Council's policies, such as the municipality's snow clearing or road grading policies, are being fairly and reasonably administered.

The Ombudsman has significant legal authority, and can require the municipality or any person to provide information relating to the matter under investigation and to produce that information if the Ombudsman requests. The Ombudsman can also summon and examine under oath any person who may have relevant information.

If the Ombudsman finds that a person's complaint is justified, the Ombudsman will provide a written report with recommendations to the Mayor/Reeve. The Mayor/Reeve must place the report on the next Council meeting agenda, where Council discusses it in a closed meeting.

The Ombudsman makes recommendations to Council that the Ombudsman deems appropriate to address the complaint and may require the municipality to report back, within a specified timeframe, on how it intends to implement the recommendations.

If the municipality does not take steps that the Ombudsman believes is adequate or reasonable, the Ombudsman may issue a further report to the Mayor/Reeve. The Mayor/Reeve must make the report public at the next regular Council meeting.

The Ombudsman also shares the results of the investigation with the complainant.

For more information on the Ombudsman visit:
www.ombudsman.mb.ca.

Courts

All citizens have a fundamental right to make a challenge to the Court of Queen's Bench, if they believe that a municipality is acting outside or contrary to its legal authority, such as not following legislated procedures, spending money without proper authority, or passing a by-law when there is no legal authority to do so.

The court process is often lengthy and is usually always adversarial, and as such is a last resort. Councils should make every effort to work with citizens to address their concerns, as ultimately, Councils are elected by, and accountable to, their citizens.

Remember!

- ❖ **Most citizen complaints can be resolved through discussion.**
Take time to listen to citizens who voice their concerns.
 - ❖ **Citizens have the right to complain to the Ombudsman about the administration of municipal policies and procedures.**
 - ❖ **It is expected that municipalities implement all recommendations made by the Ombudsman.**
 - ❖ **All citizens have a right to take a municipality to court.**
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Appendices

KEY RESOURCES FOR COUNCIL MEMBERS

Municipal Resources

- Your municipality's Policy Manual
- Your municipality's Procedures By-law
- Your municipality's Organizational By-law and Organizational Chart
- List of your Council Committees and their roles
- List of Agencies, Board & Commissions on which municipality is represented
- Your municipality's municipal employee code of conduct
- Calendar of upcoming meetings, seminars and conferences
- Minutes of previous Council & Committee meetings
- Current Financial Plan (Operating, Capital and Five Year Plan) and tax levy by-law
- Previous month's Financial Report (statement)
- Financial Audit Report
- Contact and emergency numbers for each department within your municipality

Association of Manitoba Municipalities Resources

- Visit the AMM website at: www.amm.mb.ca

Manitoba Local Government Resources

- Link to provincial legislation (eg. *The Municipal Act*, *The Municipal Council Conflict of Interest Act*) – Available at: www.gov.mb.ca/laws/index.php
- Municipal Statistics – annual publication of various statistics for each municipality. Available at: <http://web5.gov.mb.ca/mfas/default.aspx>
- A *Guide to Hiring your Chief Administrative Officer*. Available at: <http://web5.gov.mb.ca/mfas/default.aspx>
- Municipal Officials Book – annual publication listing all municipalities, council and CAO names, and municipal contact information.

Other Resources

- *Understanding Fairness* – a publication prepared by the Ombudsman and distributed to all municipalities. Available at: www.ombudsman.mb.ca

LEGISLATION GOVERNING MUNICIPALITIES

- ***The Municipal Act*** – the most important Act for municipalities. The Act establishes the framework for municipalities, and sets out municipalities' governance and corporate powers.
- ***The Municipal Council Conflict of Interest Act*** - defines situations when an individual member of council's personal interest may conflict with the broader municipal interest, and imposes consequences on council members when they put their personal interests first.
- ***The Planning Act*** – establishes the legislation to guide the use and development of private land. The Act also establishes Planning Districts and their authorities. Provincial Land Use Policies, which guide local planning decisions, are established in a regulation under the Act.
- ***The Municipal Assessment Act*** – establishes the framework for property assessment and taxation, as well as the authority of municipal Boards of Revision to consider property assessment appeals.
- ***The Emergency Measures Act*** – gives municipalities responsibilities for emergency preparedness and authorities for states of emergencies.
- ***The Public Utilities Act*** – establishes Public Utilities Board oversight over municipal utilities (eg. water and sewer utilities), including the approval of rates.
- ***The Freedom of Information and Protection of Privacy Act*** – governs access to information held by municipalities and other public bodies, as well as rules to protect the privacy of personal information.
- ***The Ombudsman Act*** – gives the Ombudsman the authority to investigate complaints about the administration of municipal policies and programs.
- ***The Environment Act*** – establishes requirements for environmental assessments and licensing, including municipal wastewater facilities, landfills, use of pesticides, livestock operations, etc.

- ***The Water Rights Act*** – establishes the rules for the use of water, including requirements for drainage licenses.
- ***The Conservation Districts Act*** – provides the framework for water conservation on a watershed basis and gives authority to Conservation District Boards.
- ***The Regional Waste Management Act*** – provides the framework for regional delivery of municipal waste management facilities, and the authority of regional Boards.
- ***The Highway Traffic Act*** – provides that municipalities are traffic authorities with powers to set traffic certain rules within the municipality, including parking, snow routes, weight restrictions on roads, etc.
- ***The Public Schools Act*** – establishes Council's responsibility to fix and impose a school division special levy that is apportioned to the municipality by the school division(s) and the education support levy requested by The Public Schools Finance Board.

This list is not exhaustive – other Acts may also apply to municipalities.

Acts are available electronically on the Government of Manitoba's website at:
www.gov.mb.ca/laws/statutes/index_ccsm.php.

CONFLICT OF INTEREST QUESTIONS AND ANSWERS

A number of commonly asked questions and answers about conflict of interest are provided here to help you understand the rules and your responsibility to report and disclose a conflict of interest when it occurs.

What is a conflict of interest?

A conflict of interest is when a person in public life is in a position where a personal interest may, or may appear to, conflict with their role as a municipal councillor. *The Municipal Council Conflict of Interest Act* generally defines a conflict of interest as a pecuniary interest.

What is a pecuniary interest?

A pecuniary interest is a financial interest that you or your dependant (spouse, common-law spouse or dependent child who resides with you) may have. A pecuniary interest may be direct or indirect, and is defined in the Act. If you have any questions regarding whether you have a pecuniary interest, you may wish to consult a solicitor.

How does the disclosure procedure work?

If you have a pecuniary interest with respect to council related business, you must:

- disclose the general nature of the interest
- withdraw from the meeting without voting on, or discussing the matter
- refrain from attempts to influence any decision on the matter

Does disclosure apply to council meetings only?

No. It applies also to committee or subcommittee meetings, or an agency, board or commission where you serve as an elected official, for example a Board of Revision. It also includes Local Urban District (LUD) committee meetings.

Does this legislation cover my family? Do I have to disclose everything they do?

Disclosure extends to the direct or indirect pecuniary interests of a spouse, common law spouse or a dependent child who resides with you. For example, if a business deal involving the municipality and your dependant comes before council, that fact should be disclosed and the disclosure procedure followed.

How is the disclosure recorded?

The CAO or recording secretary must record the nature of your disclosure and your withdrawal from a meeting. A central record is required to be kept by the CAO to show compliance.

Can the public see the record?

Yes. The record will reflect your statement regarding the disclosure, withdrawal from, and time of your return to the meeting.

What do I have to disclose in my Statement of Assets and Interests? Do I have to provide all my private financial details?

You must disclose real estate holdings in the municipality and personal financial interests that you, or your spouse or dependent child have. Only the nature of the financial interest must be disclosed, not the financial details.

You also do not have to disclose certain things. You do not have to disclose your primary residence, personal bank accounts, Canada Savings Bonds, or retirement investment savings plans. Your income, your spouse's income or your child's income also does not have to be disclosed – you only need to record the employer's name.

Your Statement must be filed by November 30 annually. It must be kept up to date and any changes noted within 30 days.

If I'm not sure what to disclose, who do I talk to? Typically, the CAO will review requirements of what needs to be included in the Statement of Assets and Interests form with council members, to ensure members understand the rules and their obligations. If a member remains unsure about what should be included, they should ask the CAO. However, in cases where a member's assets and interests are complex, it is always advisable to obtain legal advice, to ensure the Statement is filed in accordance with the Act.

Do gifts have to be disclosed?

Yes. You must declare any gift valued at \$250 or more. Gifts received continue to be part of the list of assets until the asset or interest is disposed of.

What does the CAO do with the statement?

The CAO will examine your statement to make sure you have completed the form. The CAO does not verify the accuracy of your statement; all council members have an obligation to accurately disclose their assets and interests. Your CAO will keep your statement on file.

Is my Statement of Assets and Interests a public document?

Yes. Any person can examine your Statement of Assets and Interests upon request at the municipal office.

What other conflict provisions apply to me as a member of council?

As a member of council you cannot:

- use insider information (information not available to the public) for personal gain
- receive compensation for rendering service in a matter before council
- attempt to influence the vote of another council member

These provisions do not prohibit you from appearing before council as a resident affected by planning, zoning, or an assessment matter. However, you should not vote or participate in the matter to be decided.

What if a conflict of interest is alleged?

A voter or the council may bring a conflict of interest allegation to court. Only the court has the authority to decide whether a violation of the legislation has occurred. If you are found guilty you may be disqualified from office.

What power does the court have?

The court would hear the evidence and deal with the allegation of conflict. If you are disqualified and the seat declared vacant, restitution could be directed. In some circumstances, failure to comply with the Act could render a transaction of the municipality void. Since this is a complex situation, legal advice should be obtained.

What if the conflict of interest happened inadvertently?

A judge can determine there was an unknowing or inadvertent violation of the Act and permit you to retain your seat on council.

How far back can someone go to allege a conflict of interest?

An application must be brought within six years of the alleged violation.

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