

# THE MUNICIPAL COUNCILLOR'S GUIDE 2014



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# INTRODUCTION

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Your role as a councillor is intricate and involved. You will find yourself dealing with a variety of complex and sometimes contentious issues. Even the most seasoned councillor will encounter questions that are new.

Knowing where to go for information on the roles, requirements and relationships of local government will help you to fulfil your role.

This guide covers topics that are important to know as a municipal councillor throughout your term of office. It examines the role of council and the councillor, governance and law-making in the municipal setting, the fiscal context, land use planning and housing.

The guide also includes references on where you can access more information about municipal governance, and a checklist you can use to ensure you have the documents and items that will help you fulfil your role as a councillor.

The information in this guide can help you meet your responsibility and the municipality's goals and objectives, satisfy provincial and federal requirements and provide continued high-quality service to the residents of your community.

For more information about your particular municipality and your role, talk to municipal staff.

**Note for City of Toronto Councillors:** The Municipal Act, 2001 does not generally apply to the City of Toronto; the City of Toronto is subject to the City of Toronto Act, 2006. All references in this guide are to the Municipal Act, 2001; the guide does not reference the City of Toronto Act, 2006. As many of the issues are similar in both pieces of legislation, the guide should help provide City of Toronto councillors with an understanding of many of their duties and responsibilities. However, please be aware that the legislative sections are numbered differently and, in some cases, there are differences in legal powers or duties.





# SECTION 1: ROLE OF COUNCIL, COUNCILLOR AND STAFF

After a few months in office, you may think that getting elected was the easy part. You may feel overwhelmed by the variety of matters demanding your attention. You may be challenged by complex issues, faced with controversial policies, or questioned by constituents. Understanding your role as a municipal councillor, as well as the role of council and staff, will help you address these situations and manage your time effectively.

One of the first things you could do, if you have not already done so, is develop a general understanding of the Municipal Act, 2001 (referred to throughout this section as the Act), which is a primary piece of legislation applicable to municipalities. The Act is a legislative framework for municipalities that recognizes municipalities as responsible local governments with a broad range of powers. The Act balances increased local autonomy and flexibility with requirements for improved accountability and transparency of municipal operations.

## ROLE OF COUNCIL

Section 224 of the Act is a good starting point. It outlines the role of the municipal council as follows:

“224. It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
  - (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;

- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.”

Municipal councils have a broad range of responsibilities and work load. For this reason, councils often have a number of standing committees consisting of councillors only, or advisory committees made up of a mix of councillors and appointees from the public. These committees carry out much of the work of council and then report back to council with recommendations. Examples of council committees include: planning, parks and recreation, public works, finance, administration, personnel, etc.

A committee of council is often subject to similar legislative requirements as council under the Act, such as open meetings.

The Act provides for broad delegation of council’s powers and duties to a committee of council. (See [Delegation](#))

### Role of Head of Council

Depending on your municipality, the head of council may be called a warden, chair, reeve, or mayor. Whatever title is preferred, the role of head of council as set out by the Municipal Act, 2001 remains the same:

“225. It is the role of the head of council,

- (a) to act as the chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
  - (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.”

As chief executive officer of the municipality, the head of council has special responsibilities, which are set out in section 226.1 of the Act:

“226.1 As chief executive officer of a municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality’s activities;
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and

- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.”

With such responsibilities, the head of council has a prominent and highly public profile. Many citizens within your municipality will have high and often varied expectations for the head of council. The head of council must find a way to balance these expectations.

Nevertheless, decisions of the municipality are made by council as a whole. Generally, the head of council does not have any more power than any other member of council to make decisions on behalf of the municipality.

## ROLE OF THE COUNCILLOR

As a councillor, you have three main roles to play in your municipality: a representative, a policy-making and a stewardship role. These roles may often overlap. You will be called on to consider and make decisions on issues that will sometimes be complex and controversial. Many of those decisions will have long-term consequences for your municipality that extend beyond your four-year term of office, and should be made in the context of your municipality's directions for the long-term health and welfare of your community.

### Representative Role

Looking back to section 224 of the Act, you will see that the representative role of council is clearly indicated in legislation. At first glance, the representative role appears to be fairly simple and straightforward. But what does it involve?

On the one hand, you were elected by your constituents to represent their views when dealing with issues that come before council. However, your constituents have many views and opinions, and you cannot represent all of them all of the time.

On the other hand, election to office requires you to have a broader understanding of the issues. With many issues you will have to consider a variety of conflicting interests and make decisions that will not be popular with everyone. You may wish to use your judgment and base your decision on the best interests of the municipality as a whole.

In practice, there is no single, correct approach to the representative role and on many issues you may find that you fall somewhere between the two opposing viewpoints. You will quickly develop a caseload of citizen inquiries that will need to be investigated and, if possible, resolved. You may attract these inquiries because of your background and interests or because of the issues in your particular ward if your municipality operates with a ward structure.

Understandably, you will want to try to help your constituents. However, be sure to familiarize yourself with any policies or protocols that your municipality may have for handling public complaints and inquiries. Although you may want to find some way of helping, remember to consult municipal staff.

There may also be circumstances where decisions are made by designated staff who operate at arm's length from the municipality, and where it could be inappropriate for elected officials to interfere or be seen to be interfering. Examples of this would include decisions made by the fire chief, the chief building official or the medical officer of health.

A councillor who has made promises that cannot be kept may lose credibility with the public and strain the working relationship with staff. If your municipality does not have a policy for handling public inquiries, complaints, and frequently asked questions, you may want to consider working with council and staff to develop such a policy.

### **Policy-Making Role**

Policies provide direction for municipal operations. Policy-making is another key council responsibility identified in section 224 of the Act.

Many council decisions are routine, dealing with the ongoing administration of the municipality, but others establish general principles to help guide future actions. Those are often considered policy decisions. Some policies can be specific, such as a bylaw requiring dogs to be kept on leashes in public areas, and others can be broader and more general, such as approval of an official plan.

### **How is Policy Made?**

Policy-making may involve a number of steps that requires council to:

- identify an issue that needs to be dealt with;
- reach agreement on the facts of the issue and the objectives to be met;
- give direction to staff to research the issue, identify the available options and report back to council with recommendations;
- consider the information provided by staff, taking into account demands on time, funding and other issues;
- make a decision based on the best course of action available and adopt a policy;
- direct staff to implement the policy; and
- work with staff to evaluate the policy and to update or amend it as required.

In many cases council refers a policy issue to a committee of council to take advantage of the committee's expertise in a particular area or to reduce council's work load. A committee of council may follow the same steps outlined above in making policy or making recommendations back to council.

In practice, however, policy-making is sometimes less orderly because of:

- a rapidly changing environment, the complexity of issues facing local government, and the difficulty in singling out problems that require more immediate attention;
- differing and sometimes strongly held views by stakeholders and members of the public;
- the lack of time to identify all possible alternatives and to conduct detailed research and analysis;
- the legal and financial limits on what council may do; and
- the complexity of implementing policies and developing ways to monitor and evaluate them.

Council is the primary policy-making body of the municipality. The administration is responsible for carrying out council's policy decisions. The two roles are distinct, but there can be much overlap. Although staff is responsible for implementing a policy, your council may wish to develop appropriate reporting mechanisms to help ensure that the policies are being carried out as intended, and as effectively as possible.

### Stewardship Role

Council's objectives are to ensure that the municipality's financial and administrative resources are being used as efficiently as possible. The public has come to expect the successful completion of these responsibilities from council. To refer back to section 224 of the Act, part of your role, together with the rest of council, is to ensure that administrative policies, practices and procedures are in place to implement the decisions of council and to maintain the financial integrity of the municipality. All of this can be promoted through good policy and monitoring practices.

There is a fine line between council's overall stewardship of the municipality and the administration's management of day-to-day activities. Generally, council monitors the implementation of its approved policies and programs, but the practical aspects of its implementation and administration are a staff responsibility.

Several things should be done before council can monitor and measure the municipality's administrative effectiveness and efficiency. With input from municipal staff, 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 to the extent such delegation is permitted under municipal legislation;
- establish a personnel management policy that emphasizes the recruitment, hiring, evaluation, training and development of staff;
- ensure that policies with respect to most operations of the municipality are in place, with special note to mandatory policies required by the Municipal Act, 2001;
- establish a policy and procedure for staff to report to council on administrative activities;
- develop protocols for the flow of information between council and staff; and
- consider establishing a protocol for sharing approaches with other local governments and Aboriginal communities that share a common interest in community health, culture and economy.

To be effective in this stewardship role, council should be satisfied that policies are in place on staff reporting requirements and processes to help ensure that:

- 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 ; and
- funds are being spent only as authorized, and the municipality's resources (financial and otherwise) are being used as efficiently as possible.

Establishing and following such policies and guidelines helps council leave the day-to-day details for staff to manage. Council is freer to:

- deal with exceptional situations;
- concentrate on ensuring that policies are current; and
- listen to issues raised by the public and represent the broader community interest.

### **Accountability and Transparency**

Accountability and transparency are a priority in maintaining public trust in council and in the management of your municipality. Section 224 of the Act explicitly includes ensuring the accountability and transparency of the

operations of the municipality as part of the role of council. Councillors are, of course, accountable to the public every four years through municipal elections, but it is important that procedures and policies are clearly set out and accessible, and that the day-to-day operations of the municipality are transparent.

Documenting municipal policies is an important action of an open and transparent council. Many municipalities have developed policy manuals to provide a basis for sound decision-making and to help ensure that policies are implemented and applied in a consistent way. The policy manual is a reference and information source for council, the administration and the public. Because the policies and procedures it contains may cover many of your municipality's functions and responsibilities, it can also be a valuable training and orientation tool for new councillors and staff.

Section 270 of the Act requires municipalities to have policies on:

- sale and other disposition of land;
- hiring of employees;
- procurement of goods and services;
- when and how to provide notice to the public;
- how the municipality will try to ensure accountability and transparency to the public; and
- delegation of powers and duties.

Section 270 also requires local boards to have policies with respect to sale and other disposition of land, hiring of employees, and procurement of goods and services.

To help ensure integrity and accountability in public office, Part V.1 of the Act (sections 223.1 to 223.24) provides that municipalities may pass bylaws to establish:

- an Integrity Commissioner;
- a municipal Ombudsman;
- an Auditor General;
- a lobbyist registry and registrar; and
- a code of conduct for council and local board members.

The Integrity Commissioner reports to council. The Integrity Commissioner's role is to perform, in an independent manner, the functions assigned by council with respect to the application of: (1) a code of conduct for members of council and local boards; and (2) the application of procedures, rules and policies governing the ethical behaviour of members of council and local

boards. The Commissioner's functions may include conducting inquiries into requests from council or a local board, a member of council or a board, or a member of the public about whether a member of council or a local board has contravened the applicable code of conduct. If the Commissioner reports that a member of the council or local board has contravened the code of conduct, the municipality may impose a penalty in the form of a reprimand or a suspension of pay for a period of up to 90 days.

The municipal Ombudsman's function is to investigate, in an independent manner, decisions and recommendations made and acts done or not done in the course of the administration of a municipality, local boards or certain municipal corporations, as the municipality specifies.

Section 239.2 of the Act also provides that a municipality may appoint an investigator to investigate, in an independent manner, complaints about closed meetings. Should a municipality not appoint an investigator, the Ontario Ombudsman is the closed meeting investigator, by default, for the municipality. (See [Open and Closed Meetings: Public Business](#))

The Auditor General may assist council in holding itself and municipal administrators accountable for the quality of stewardship over public funds and achieving value for money in municipal operations. The Auditor General must also perform his or her duties in an independent manner. The Auditor General's responsibilities do not include the responsibilities of the municipal auditor.

The Act authorizes a municipality to establish a public registration system for lobbyists and to do other things in relation to a lobbyist registration system, such as establishing a code of conduct for lobbyists and prohibiting former public office holders from lobbying for a designated time period.

### **Codes of Conduct**

Some municipalities have codes of conduct for members of council and local boards. They may also have other procedures, rules and policies governing the ethical behavior of those members. It is generally up to the municipality to determine the content of its code of conduct (if it chooses to have one) and its style – for example a general set of principles, or a more detailed set of rules on specific issues. Some common issues that codes address include use of municipal resources, gifts and benefits and conduct at council meetings.

Other statutes may require specific or general codes of conduct of relevance to municipal council as well. For example, section 7.1 of the Building Code Act, 1992 (BCA) requires municipalities to establish and enforce a code of conduct for the chief building official and inspectors. The BCA outlines the purposes of the code of conduct and requires that the code of conduct provide for its enforcement. According to the BCA purposes of a code of conduct include:



- (a) promoting appropriate standards of behaviour and enforcement actions;
- (b) preventing practices which may constitute an abuse of power; and
- (c) promoting appropriate standards of honesty and integrity by a chief building official or building inspector in the exercise of a power or the performance of a duty under the BCA or Building Code.

The code of conduct must include policies or guidelines to be used in responding to allegations that the code of conduct has been breached and must set out the disciplinary actions that may be taken if the code is breached. As well, the BCA requires the municipality to ensure that the code of conduct is brought to the attention of the public.

(For more on BCA and codes of conduct, see: [Section 6: Building Regulation](#))

### **Public Sector and MPP Accountability and Transparency Act, 2014**

The Public Sector and MPP Accountability and Transparency Act, 2014 received Royal Assent on December 11, 2014. The amendments in the Act for the municipal sector will come into force on January 1, 2016.

This legislation builds on the current local integrity framework in the Municipal Act, 2001 and the City of Toronto Act, 2006 (described above), which gives municipalities the powers to develop local integrity frameworks based on local needs and capacity. The amendments will provide the people of Ontario with access to stronger accountability processes by making sure that everyone has access to an ombudsman.

The Ontario Ombudsman plays a crucial role in enhancing transparency in government. It is important to remember that the Ombudsman is there to help serve our citizens better, and to help get government right at all levels.

The amendments will provide the authority for the Ontario Ombudsman to investigate municipal matters. While the Ombudsman could not compel municipalities to take action, the Ombudsman could make recommendations to council and the municipality as part of his or her report. It is up to the municipality whether and how to address any recommendations made by the Ombudsman.

The Ontario Ombudsman's office determines how to prioritize matters brought to its attention through complaints. These changes will allow the Ombudsman to examine broad systemic issues that impact a wide range of municipalities and Ontarians.

The amendments will not require municipalities to appoint an ombudsman. Only the City of Toronto is required to have a locally-appointed ombudsman,

as set out in the City of Toronto Act. All other municipalities could continue to appoint their own ombudsman if they choose. If a municipality has appointed an ombudsman, the Ontario Ombudsman could still conduct an investigation into a complaint to the local ombudsman in that municipality, but only after local ombudsman processes are completed.

The amendments will work together with local tools to ensure that everyone has access to an ombudsman. Locally-appointed integrity officers and municipal codes of conduct are an important part of Ontario's local accountability framework. The Ontario Ombudsman could investigate complaints made to local integrity officers but only after their complaint processes are completed. The Ontario Ombudsman could also include one or more municipalities, including Toronto, in a systemic, broad ranging investigation.

There will be no change to the current meeting investigator role. Municipalities will still have the power to appoint an investigator to independently investigate whether a municipality or local board has complied with closed meeting requirements under the Municipal Act, 2001 or the local procedure by-law. The Ontario Ombudsman would not be able to investigate a closed meeting complaint if a local meeting investigator is appointed. As is currently the case, if a municipality does not appoint an investigator, the Ontario Ombudsman acts as the meeting investigator.

A regulation under the amended Ombudsman Act will exempt certain local boards in the municipal sector from the Ontario Ombudsman's oversight. This regulation will come into force at the same time as the amendments, January 1, 2016. This regulation recognizes that oversight systems already exist for these entities.

The exemptions are similar to the municipal ombudsman framework in the Municipal Act, 2001 and the City of Toronto Act, 2006 and will exclude the following from Ontario Ombudsman oversight:

- children's aid societies;
- boards of health;
- committees of management established under the Long-Term Care Homes Act;
- police services boards; and
- public library boards.

## ROLE OF STAFF

A key feature of effective and efficient councils is a well-developed understanding of council-staff relations and the role of each party. Just as section 224 of the Municipal Act outlines the role of council, section 227 sets out the role of staff:

227. It is the role of the officers and employees of the municipality:

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

There are also some specific provisions about the duties of some officers of the municipality, such as the clerk and the treasurer.

Many municipalities realize the importance of council-staff relations. Some councils have established programs that require employee input into operational policies and procedures. Programs like this recognize the experience and expertise of staff. They also encourage communication between management staff and council.

To assist staff in meeting council's expectations, council could:

- have a policy requiring comprehensive job descriptions for all staff that specify individual duties and responsibilities;
- provide clear policy decisions and directions;
- develop policies in an open and consistent manner;
- adopt policies that complement and reinforce staff efforts to improve administrative operations;
- consult with staff before deciding on policies and programs;
- direct that orientation be provided to new staff; and/or
- establish a staff training and development policy.

As a councillor, you can also assist staff by:

- making yourself aware of the full range of duties and responsibilities of staff; and
- preparing for council meetings (reviewing the agenda, talking to staff about the history and background of issues, and knowing your constituents' situations and concerns).

Staff, in turn, could:

- provide well-organized agendas, with supporting materials;
- provide sufficient, timely information and analysis to make council's decision-making easier;
- notify council of changes to legislation and programs;
- provide advice on policy (including options and recommended actions), identifying the costs and benefits for the community in human and financial terms; and
- notify council immediately of any unintended or unexpected impacts of policy decisions.

Continuing education is important to municipal staff and councillors. Many municipalities have developed a detailed policy on training and educational opportunities for staff. Training, development and networking opportunities are provided through:

- courses run by colleges and universities;
- conferences, seminars and meetings delivered by professional associations;
- books and journals that are designed for municipal government; and
- workshops/information sessions and conferences offered by the MMAH, the Association of Municipalities of Ontario (AMO), the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), the Ontario Municipal Management Institute (OMMI), the Ontario Building Officials Association (OBOA) and other well-recognized municipal organizations.

### **Council-Staff Relationship and Roles**

Councils and their administration have different roles within the municipality, but their roles have common goals and purposes. In general, it is the role of the elected council to represent the community and set the direction and policy for the municipality, and it is the role of staff to manage people and resources to achieve council's vision.

Council generally sets the policy direction for the municipality, and staff provides the research and expert advice to help council in their decision-making process. Once council makes a decision, staff has general responsibility to implement the policy of council, for example through administering and delivering services and programs to the community.

The relationship between council and staff is a vital component of an effective municipal government. Staff and council rely on one another to move the municipality forward. Both staff and council provide leadership; council

provides political leadership, while administration provides leadership to the organization.

Both council and administration are in their roles to serve the public. The relationship between staff and council is intertwined and it is important for council members and staff to respect one another's roles so that they can serve the public in an effective and efficient manner.

## STRATEGIC PLANNING

A strategic plan can be an essential part of municipal governance. It is a document that looks to the future, clearly setting out the municipality's vision and priorities. Becoming familiar with your municipality's strategic plan is an effective way of understanding both the organization and the broader environment in which you will be working. Your municipality's administrative, financial and planning decisions should reflect and support the strategic plan.

Decisions, both popular and unpopular, are more easily made when seen in the context of your municipality's broader, long-term strategy. The plan is a framework that encourages consistency in municipal decision-making among both councillors and staff. When developed with public input, the plan represents a shared view of the municipality's future and encourages public commitment to achieving it.

Not all municipalities have a strategic plan. If yours does not, you may wish to consider the benefits of a strategic plan to your community, and encourage your council colleagues, municipal staff, and the public to work together to develop and implement one.

If your municipality does have a strategic plan, you may want to find out when it was developed and determine if the time has come to review the plan, and if it needs to be updated.

## SUCCESSION PLANNING

Succession planning is the process of systematically identifying and forecasting vacancies and then planning for future employee positions. It is becoming increasingly important as we see baby boomers age and move into retirement. For example, 43.8 per cent of the employees enrolled in Ontario Municipal Employees Retirement System (OMERS) are aged 50 years and older (Source: OMERS 2014) representing a significant loss in the Ontario workforce. This is especially important for smaller and rural municipalities who often find it difficult to recruit and retain educated and skilled employees.

Developing a strategic approach for succession planning in your municipality

will help ensure that you will have access to talent and skills when needed. It will also help ensure that institutional knowledge and essential abilities will be maintained, especially when employees in critical positions leave.

A succession plan that focuses on developing the talent of current employees (career planning and advancement) provides for a smooth transition and continuation of municipal services. Other benefits of having a succession plan may be:

- employees feeling valued and appreciated;
- enhanced knowledge transfer and skill set retention;
- identified source of replacements for key leadership positions; and
- savings to the taxpayer by avoiding temporary and costly external staffing services.

It may be the role of the chief administrative officer to prepare this plan under council's guidance.

There are a number of factors to consider when creating your succession management plan including: staff assessment (upcoming retirements, staff interested in skills development and workplace advancement), recruitment and training strategies and allocating resources to support succession planning.

## **KEY TIPS**

- Familiarize yourself with what policies are in place in your municipality, for example, for handling public inquiries and complaints, staff council reporting, municipal policy manual, code of conduct for council and board members.
- A municipal strategic plan can be an important part of municipal governance. If your municipality has one, familiarize yourself with it.
- All municipalities, if they have not already done so, are encouraged to create an employee succession plan.

## SECTION 2: AN OVERVIEW OF LOCAL GOVERNMENT

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A municipality is defined in section 1 of the Municipal Act, 2001 (referred to throughout this section as the Act) as a “geographic area whose inhabitants are incorporated.”

In addition to municipalities, there are a number of other locally governed boards and special-purpose bodies, such as school boards, health units, library boards and conservation authorities, with responsibility for public services at the community or regional level.

In Northern Ontario, most of the population lives in municipalities, but most of the land mass is “unorganized territory” – that is, areas of the province without municipal organization. Local services boards and local roads boards have been created to deliver basic community services to the residents in some of the areas without municipal organization.

Your day-to-day activities as a council member will often involve working with local boards and commissions, other municipalities, other levels of government and various municipal associations. All of these bodies play a part in the functioning of local government. For example, some councils or groups of councils regularly have joint meetings with councils of neighbouring First Nations to partner on issues of mutual interest and benefit.

This section will provide you with a general description of municipal government structures and services. It will also describe the links between municipalities and other players associated with the local sector. For more detailed information, you may wish to consult other materials located on the Ministry of Municipal Affairs and Housing (MMAH) website at: [ontario.ca/mah](http://ontario.ca/mah).

### MUNICIPAL GOVERNMENT

Section 2 of the Act provides that “municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction, and each municipality is given powers and duties under the Act and many other Acts for the purpose of providing good government with respect to those matters.”

## Municipal Roles and Responsibilities

The Act is a framework document for municipal government.

Authority for important municipal activities can also be found in many other acts, including the Planning Act, the Building Code Act, 1992, the Social Housing Reform Act, 2000, the Police Services Act, the Fire Protection and Prevention Act, 1997, the Emergency Management and Civil Protection Act, and the Ontario Works Act, 1997, which are all administered by the provincial government. (See [Section 3: Councillors as Law Makers](#))

It is important to note that some municipal services are mandatory – they must be provided, while others are optional – council can decide whether or not to provide them.

Also, in a two-tier system of local government where there is an upper-tier (county or region) as well as lower-tier (local) level of government, some services are delivered by the upper-tier municipality. Upper-tier municipalities often co-ordinate service delivery between municipalities in their area or provide area-wide services.

In many cases, services are assigned by legislation to upper or lower-tiers either exclusively or non-exclusively. Waste management is a good example. Certain upper-tier municipalities are exclusively responsible for waste management matters, except for waste collection. In some cases, responsibility can be shared by both levels of local government. Both upper-tier and lower-tier municipalities, for example, can provide parks and other recreational facilities.

It is important to look at the governing legislation to determine whether a service is to be provided by the upper or lower tier or both.

Certain responsibilities set out in the Act may be transferred from one tier to the other with triple majority approval. This is when an item has the approval of both a majority of members on the upper-tier council, and a majority of the lower-tier municipal councils representing a majority of all the electors in the upper-tier municipality. As a citizen and a taxpayer, you have some idea of municipal functions. However, as a councillor, you may wish to deepen your knowledge of municipal functions and become familiar with the programs and services that your municipality does or does not provide. If your municipality is part of a two-tier structure, you may wish to know the responsibilities of the upper-tier and lower-tier municipalities in your area.

## Service Managers

Some municipalities act as service managers (SMs). Generally, these are the municipalities that are designated as service delivery agents for Ontario Works (social assistance), childcare, and affordable and social housing. Municipalities



that are SMs may also have special responsibilities in connection with land ambulance and other matters. Consolidation of such services helps them to be planned and administered on a regional basis, even in areas not served by two-tier systems.

Most municipalities designated as SMs are upper-tier municipalities; however, some are single-tier municipalities. A SM's service area may or may not be within the SM's municipal boundaries. Instead, it may follow current or historical upper-tier boundaries and may include separated municipalities within the boundaries. (See: [Municipal Structures](#))

It is important for all councillors to know and understand the role and interests of the SM.

As a councillor, you may wish to keep a list identifying the SM and other organizations providing services to the public or to the municipality for your area.

## MUNICIPAL ORGANIZATION

The official name of your municipality may include a term such as township, village, town or city. You will be familiar with terms such as county or region, often used in the names of upper-tier municipalities. Such terms usually do not determine the legal powers and responsibilities of a municipality.

The Act distinguishes between the following three types of municipalities:

- upper-tier municipalities, found within a two-tier municipal structure;
- lower-tier municipalities, found within a two-tier municipal structure; and
- single-tier municipalities.

The legal powers and responsibilities of these three types of municipalities vary from one another.

The City of Ottawa, for example, has the status of single-tier, as does the Town of St. Mary's (although geographically located within Perth County) and the Township of Matachewan in Northern Ontario. The City of Cambridge in Waterloo Region, the Town of Hawkesbury in the United Counties of Prescott and Russell, and the Township of Melancthon in the County of Dufferin are examples of lower-tier municipalities in a two-tier system. The Regional Municipality of Durham and the United Counties of Leeds and Grenville have the status of upper-tier municipalities.

Some municipalities have opted to use the generic term "municipality" in their official name, as in the Municipality of Grey Highlands (which has the status of a lower-tier municipality in the County of Grey).

The Act states that a municipality may change its name as long as the new name is not the same as another municipality's and other requirements are met. The legislation also states the change of name does not affect the status of a municipality as an upper-tier, lower-tier or single-tier municipality.

The Act standardizes and clarifies municipal roles and responsibilities for the three types of municipalities – that is, the upper-tier, lower-tier and single-tier structures.

### Two-Tier Municipal Structures

If your municipality operates in a two-tier structure, the upper-tier municipality delivers certain services within its geographical boundaries.

Lower-tier municipalities are also sometimes referred to as local municipalities. Membership on local council is by direct election, either by wards (i.e., election by the electors in one ward only) or "at large" (i.e., election by the electors of the whole municipality).

Upper-tier councils are usually not directly elected, although some are. Often, members of upper-tier councils become members by other methods. For example, an upper-tier council member may become one automatically because he or she is head of a lower-tier council (this is sometimes called indirect election). There are many variations. If you have a question regarding your municipality, you may wish to contact your municipal clerk.

The head of the upper-tier council is typically called the warden or the chair and is usually elected indirectly as well – by and from among the members of the upper-tier council, usually at the inaugural meeting of the new council. Once again, there are exceptions to this rule. For example, in Halton and Waterloo regions, the chair of regional council is elected by the electorate at large from across the region and does not sit on a lower-tier council. Other regional chairs, such as those of Peel and York regions and the District of Muskoka, are appointed by the upper-tier council without being previously elected to any municipal office.

As a lower-tier member of council sitting on an upper-tier council, it may be important to know and understand the broader roles, responsibilities and interests of both councils, as well as their communities.

### Single-Tier Municipalities

Single-tier municipalities are also referred to as local municipalities and include:

- single-tiers created by the amalgamation of former regions, such as the cities of Toronto, Ottawa, Hamilton and Greater Sudbury (generally large, self-contained service areas with sole responsibility for all municipal services, including all consolidated municipal services);

- single-tiers created by the amalgamation of former counties, such as the Municipality of Chatham-Kent and the City of Kawartha Lakes (with sole responsibility for most municipal services, including most consolidated municipal services);
- separated municipalities in southern Ontario – such as the cities of Cornwall, Barrie, Brockville, Brantford, Guelph, Kingston, London and Windsor, the towns of Gananoque, Prescott, Smiths Falls, St. Mary's and the Township of Pelee – which are not members of the upper-tier municipalities in which they are geographically situated, although they share responsibility with them for consolidated municipal services and some other services; and
- all municipalities in Northern Ontario.

## Northern Ontario

Whether you are a councillor in Northern Ontario or not, it may be helpful to understand that local governance in Northern Ontario is different in some ways from governance in the rest of the province. Here are some key points:

- All municipalities in Northern Ontario are single-tier.
- Much of Northern Ontario is not organized for municipal purposes. These are not municipalities, and are sometimes referred to as townships without municipal organization or TWOMOs.
- In the north, there are currently ten District Social Services Administration Boards (DSSABs) that are designated as SMs providing certain services (such as Ontario Works) to both municipalities and unorganized territory. However, in one case in Northern Ontario, a municipality, the City of Greater Sudbury, is designated as SM within the territorial area of that City.

DSSABs are created under the District Social Services Administration Board Act. Each DSSAB is governed by a board consisting of a mix of municipal representatives and individuals in TWOMOs. A regulation under the DSSAB Act sets out the composition of and other matters for each individual Board. (Ontario Regulation 278/98: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_030204\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_030204_e.htm)).

There are two kinds of municipal appointments:

- **Specific municipal representation** - these members are appointed directly by their respective municipal councils.
- **Shared municipal representation** - these members are appointed jointly by a group of municipalities in an area that is within a larger DSSAB district. Often which municipalities actually nominate representatives is addressed through an agreement among the municipalities involved.

There also may be members representing a TWOMO. These are selected by the residents in the TWOMOs. In practice, each DSSAB conducts elections for these members to coincide with municipal elections.

As with upper-tier and lower-tier councillors, it may be helpful for DSSAB municipal representatives to know and understand their role on the DSSAB board and to consider the interests of the whole board when participating in DSSAB.

In unincorporated areas, the Ministry of Northern Development and Mines (MNDM) assists residents of communities in unorganized territory to set up local services boards (LSBs) to deliver basic services.

LSBs are established under the Northern Services Boards Act. Their services may include fire protection, water supply, garbage collection, sewage, street and area lighting, recreation, and public library service. LSBs are not considered municipalities, but may come/fall under the jurisdiction of the Municipal Act for certain purposes. (See [Committees, Local Boards and other Special Purpose Bodies](#)) MNDM provides funding to help offset LSB costs.

Local roads boards (LRBs) are established under the Local Roads Boards Act. MNDM allocates funding and, in conjunction with the Ministry of Transportation, supports the maintenance and construction of local roads in areas without municipal organization.

For more information on northern services boards, see the MNDM website at: [ontario.ca/mndm](http://ontario.ca/mndm).

## ABORIGINAL PEOPLES

Aboriginal peoples have a long history in Ontario. Both modern and traditional First Nation and Metis communities can be located alongside and within municipal boundaries. It is important that municipalities are aware of the Aboriginal history in their area so that they can consider how it may impact and inform municipal decision-making.

Much of Ontario is covered by treaties between the Crown and First Nations. It is important to be aware of the content of treaties in your area to ensure that any municipal decision-making takes into account commitments made in the treaties. Knowledge of treaty rights, whether they be established or asserted, can provide for better informed decision-making when developing municipal processes and policies.

There may be opportunities for collaboration between municipalities and Aboriginal communities on matters of mutual interest. Engaging with Aboriginal communities in areas such as economic development, planning and

development or community services, can help your municipality understand where your municipal actions may intersect with the Aboriginal communities' interests. Stronger communities can result from joint action that builds upon all communities' strengths.

## MUNICIPAL RESTRUCTURING

This section will provide you with a general overview of the municipal restructuring process.

Municipal restructuring refers to activities that may be in response to changing municipal responsibilities and growth-related issues. The principal forms of municipal restructuring activities are annexations and amalgamations. Annexations change municipal boundaries by, for example, moving jurisdiction for land from one municipality to another. In Northern Ontario, annexation also refers to municipal boundary changes when adjacent unincorporated territory is transferred to the jurisdiction of a municipality. Amalgamations are mergers of neighbouring municipalities.

The Act (sections 171 to 173) sets out a process for locally developed proposals for municipal restructuring, including both annexations and amalgamations. A locally developed restructuring proposal is implemented by an order of MMAH's Minister, at the Minister's discretion (for more detail on the powers of the Minister, see Ontario Regulation 204/03: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_030204\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_030204_e.htm)).

Any future proposed development on the lands to be annexed would have to comply with the requirements of the Planning Act and any other applicable legislative or regulatory requirements.

Municipal restructuring proposals must describe details, such as new boundaries, effective date, council composition and transitional provisions. Before voting on a restructuring proposal, the councils of the municipalities must give notice and hold at least one public meeting. It is not unusual for all involved municipalities to hold a joint public meeting. Public notice for the meetings is determined by each municipality according to its procedure bylaws. Municipalities are expected to consult with Aboriginal communities to determine if the proposed changes might adversely affect Aboriginal or treaty rights (such as hunting or fishing) or Aboriginal interests. Changes related to municipal restructuring of interest to Aboriginal communities may include the potential for future land development and related servicing decisions.

Municipalities must have the required support before submitting a restructuring proposal to the Minister. In areas with a two-tier municipal government, support by the upper-tier is required and a majority of the

councils representing a majority of electors in all the local municipalities. The council of any separated municipality included in the proposal must also give its consent (see Ontario Regulation 216/96: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_960216\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_960216_e.htm)).

In areas without an upper-tier government, the prescribed level of support is a double majority. This means a majority of the local municipalities and local bodies in unorganized territories affected by the proposal, representing a majority of the electors (see: Ontario Regulation 216/96: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_960216\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_960216_e.htm)).

Municipalities that have been created or restructured through special legislation (for example, Toronto, Hamilton, Ottawa, Greater Sudbury, Haldimand County, Norfolk County or regional municipalities) may use the Municipal Act process described above for minor restructuring proposals only (such as boundary adjustments).

Contacting MMAH early in the development stage of the restructuring proposal helps to ensure appropriate form and content and may eliminate problems with completeness and compliance with applicable legislation and regulations. Whenever possible, municipal staff should provide to ministry staff a draft of the municipal restructuring proposal and a legal description of any lands to be annexed before it is given final approval by the municipal councils.

## COMMITTEES, LOCAL BOARDS AND OTHER SPECIAL PURPOSE BODIES

As a councillor, you likely know that there are many kinds of local bodies – public bodies involved in the provision of services at or linked to the local government level. They are known by various names: municipal service boards, school boards, police services boards, boards of health, hospital boards, transit commissions, library boards, conservation authorities, children’s aid societies, planning boards and committee of adjustment/land division committees, for example.

Local and other bodies are referred to in legislation administered by different provincial ministries. These ministries may have factual or background information about provincial aspects of or interests in these bodies.

For example, MMAH administers the Municipal Act and the Planning Act. The Municipal Act helps municipalities establish municipal service boards and municipal services corporations. The Planning Act provides for the establishment of planning boards and land division committees.

The Ministry of Education administers the Education Act, which governs district school boards and other school authorities (sometimes called school boards). The Ministry of Community Safety and Correctional Services administers the Police Services Act. That Act establishes police services boards for municipalities. The Health Protection and Promotion Act – which establishes boards of health – and the Public Hospitals Act – which regulates and empowers boards of hospitals – are administered by the Ministry of Health and Long-Term Care. Public library boards are regulated under the Public Libraries Act, administered by the Ministry of Tourism, Culture and Sport. The Conservation Authorities Act, administered by the Ministry of Natural Resources, establishes conservation authorities.

There is considerable variation in the different bodies that are local or have links to municipalities. Bodies or entities established under the Act and under other statutes, may or may not also be local boards. In other words, not all bodies with a link to a municipality are local boards.

A local board, like a municipality, carries a special legal status in the sense that particular rules, or rights and responsibilities, may apply. Different kinds of local boards can have different rules apply to them. Each case needs to be looked at individually.

Local boards are often subject to the same or similar rules as municipal councils. For example, some kinds of local boards are required to adopt and maintain policies with respect to sale and other disposition of land, hiring of employees and procurement of goods and services (see section 270 of the Act as a key reference: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK325](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK325)). Other contexts where there may be rules for certain local boards include, among others:

- open meetings (similarly see sections 238 and 239: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK287](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK287));
- fees and charges (Part XII: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK466](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK466));
- audit requirements (sections 296 and 297: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK357](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK357));
- remuneration of employees (sections 283 and 284: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK341](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK341)); and
- governance of, dissolution of and changes to local boards (sections 216: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK231](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK231)) and 196: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK211](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK211))



As with any other subject in this handbook, those with an interest may wish to familiarize themselves with the particular context.

### **Municipal Service Boards**

Municipal service boards are local bodies that may be established by an individual municipality or by two or more municipalities. A municipal service board must have at least two members. Generally, former public utility commissions, parking authorities and boards of park management are municipal service boards.

The municipality or municipalities can decide, among other things:

- the name, composition, quorum and budgetary process;
- eligibility of persons to be board members;
- manner of selecting members;
- term of office;
- number of votes of board members;
- rules, procedures and policies the board must follow; and
- relationship to the municipality, including financial and reporting relationship.

Municipalities may wish to consider whether it would be useful to delegate some of their powers to municipal service boards.

### **Municipal Committees**

Some municipalities have a governance structure that includes standing committees of council. Such committees may focus on a particular area of on-going municipal matters, such as finance and budgeting. Other committees may be set up for a set period of time to deliberate on short-term matters. Committees may have many functions. For example, often they provide advice and guidance to council as they consider local matters; others make decisions on local matters.

Generally, municipal committees whose membership is made up of at least 50 per cent of people who also serve as members on a municipal council or a local board must conduct their meetings in accordance with the open meetings provisions in the legislation – including proper record keeping done by the appropriate officer.

The municipal procedures bylaw would also apply to these committees. Such bylaws describe, among other things, how committee meetings are called, where they will take place, how public notice of the meeting will be given, and other rules on how the meetings will be run.



Municipalities can consider requiring other municipal committees to follow procedural rules.

Generally, municipal freedom of information legislation applies to records of municipal committees in the way that it applies to most municipal records.

### **Council-Board Relations**

Bodies with links to a municipality may have varying degrees of independence from municipal council control. Some bodies may be beyond effective control of council for practical or legal reasons. Bodies such as school boards, hospital boards, boards of health, conservation authorities, and district social service administration boards, for example, generally operate quite independently of council. The school boards operating in your municipality have their own elected governing bodies. In the school context, the general role of municipalities (or their clerks or other staff) includes responsibility for school board elections and collecting school taxes.

You may wish to become familiar with the responsibilities of local boards and other special purpose bodies linked to your municipality and to be aware of their relationship to council.

### **Council-Committee Relations**

As noted, some municipalities have standing committees of council, or other committees, that focus on particular areas. Generally, municipalities decide on the make-up of committees and members of committees often include members of council, municipal staff and citizens.

One frequent role of municipal committees is to provide advice and guidance to council on matters related to the committee's mandate. Municipal committees and local boards, and other local bodies, provide an opportunity for council to take advantage of areas of expertise. Committees, local boards and other local bodies may provide opportunities for volunteers to bring views and ideas from a range of perspectives.

## **CHANGES TO COUNCIL COMPOSITION**

There are provisions in the Act under which a local municipality – by local initiative and subject to certain rules – can alter the composition of its council, including changes to the size of council, members' titles and certain methods of election or selection of members. The provisions apply, with some differences, to all single-tier and lower-tier, and some upper-tier municipalities. Regional municipalities can only make changes to their councils if authorized to do so by a regulation made by MAH's Minister after receiving a request by the region.

## HOW TO FILL VACANCIES ON COUNCIL

In the event that a municipal council seat becomes vacant, council must declare the council seat vacant at its next meeting. However, if the vacancy is due to the death of a member, the declaration may be made at either of its next two meetings. A copy of the declaration must be forwarded immediately to an upper-tier council if the declaration is made by a lower-tier and vice versa. Section 263 (5)1 of the Act states that within 60 days of declaring the council seat vacant, council must decide whether to fill the vacancy through a by-election or by appointment for the remainder of the council term.

If a vacancy is declared after March 31 in a regular election year, the seat may only be filled by appointment. Also, a vacancy must be filled unless it occurs within 90 days before voting day of a regular election. If the vacancy occurs within 90 days before a regular election, section 263 (5)3 of the Act states that the municipality is not required to fill the vacancy.

If council decides to appoint a person to a vacant council seat, the appointee must consent to the appointment and must be eligible to hold office. Council decides what process it will use to choose the person it appoints.

If council decides to hold a by-election instead of appointing a person to fill a vacancy, council must pass a bylaw to have a by-election. The Municipal Elections Act, 1996, sets out the processes for a municipal by-election: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_96m32\\_e.htm#BK84](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96m32_e.htm#BK84).

There may be other considerations depending on the nature of the vacancy and the municipality (head of council, upper-tier, lower-tier etc.).

## MUNICIPAL ASSOCIATIONS

The Act recognizes municipalities as responsible and accountable governments and endorses the principle of ongoing consultation between the provincial government and municipalities on matters of mutual interest. Subsection 3(1) of the Act requires the provincial government to consult with municipalities in accordance with a memorandum of understanding (MOU) between the provincial government and the Association of Municipalities of Ontario (AMO). The current MOU provides for consultation between the provincial government and AMO when the government is proposing a change in legislation and regulations that will, in the provincial government's opinion, have a significant financial impact on the current municipal budget year or budget planning cycle. The MOU also provides for provincial consultation with AMO on the negotiation of certain agreements between the Government of Canada and Ontario that have a direct municipal impact.

AMO is a non-profit organization that represents almost all municipalities in the province. AMO provides a variety of services – including the gathering and dissemination of information, policy development and inter-government relations. AMO meets regularly with the MAH Minister and other provincial ministers to discuss issues of interest to municipalities. For more information on this association, see the AMO website at: [amo.on.ca](http://amo.on.ca).

There are several specialized municipal associations that are part of the AMO organization. These include the Rural Ontario Municipal Association (ROMA), the Ontario Small Urban Municipalities (OSUM) and regional municipal groups such as the Federation of Northern Ontario Municipalities (FONOM) and the Northwestern Ontario Municipal Association (NOMA). Many other organizations are associate or affiliate supporters of AMO.

- There are many other professional municipal organizations with specific subject matter specialties, such as, the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), the Municipal Finance Officers' Association of Ontario (MFOA), Ontario Municipal Tax and Revenue Association (OMTRA) and the Ontario Municipal Engineers Association (MEA).
- There are other municipal groups whose membership includes a mix of political and professional staff related to specific municipal service areas, such as the Ontario Good Roads Association (OGRA), the Ontario Library Association (OLA), the Ontario Non-Profit Housing Association (ONPHA), and the Association of Local Public Health Agencies.

The City of Toronto and a few other smaller municipalities have chosen not to be members of AMO.

Toronto is not a member of AMO. Subsection 1(3) of the City of Toronto Act, 2006 states that "... it is in the best interests of the Province and the City to engage in ongoing consultations with each other about matters of mutual interest and to do so in accordance with an agreement between the Province and the City." The Toronto-Ontario Cooperation and Consultation Agreement formalizes co-operative practices and commits the two governments to consult with each other on matters of mutual interest.

Other municipal political associations – such as Large Urban Mayors Caucus of Ontario (LUMCO), Mayors and Regional Chairs of Ontario (MARCO), which represents the larger single-Tier and Upper Tier (or Regional Municipalities) of Ontario, and the Association of Francophone Municipalities of Ontario (AFMO) – also meet regularly with MMAH. Contacts between MMAH and municipal associations are generally co-ordinated through MMAH's Intergovernmental Relations and Partnerships Branch.

Lists of municipal and related associations, together with contact information, can be found in the Municipal Directory published by AMCTO.

## **KEY TIPS**

- You may wish to consider local circumstances when creating municipal committees and boards.
- As a councillor, you may wish to become aware of the various bodies, including advisory committees, standing committees, and local boards that may be involved in delivering services and programs and providing advice and guidance to your council.
- Review available terms of references for your municipality's local boards, other local bodies, and committees to understand the scope and nature of their work.
- Rely on municipal staff to provide guidance and expertise on possible governance structures for program and service delivery.
- Information held by the municipality should be easily accessible to internal and external stakeholders. It is best to minimize withholding of information from the public, keeping in mind when it is required by or permitted by legislation.

## SECTION 3: COUNCILLORS AS LAWMAKERS

Perhaps the biggest way you can make an impact on your municipality is through your council's bylaws. The policies established by council will shape the long-term health and well-being of your community for years to come. Most councillors are aware of this role. However, you should also be aware of the various legal limitations on your municipal powers.

### LEGAL CONSIDERATIONS ON EXERCISING POWER

A fundamental consideration is the constitutional position of local government. The Constitution Act, 1982 (formerly the British North America Act, 1867) states that provincial governments have the exclusive right to pass laws respecting municipal institutions. Because municipalities are provincial creations, generally they only do what they have been authorized to do by the provincial government. A number of general consequences follow from this:

- a provincial government would give a municipality only those powers that it may exercise itself within the Constitution's division of federal and provincial powers;
- generally, a municipal bylaw may not override a conflicting provincial statute. A bylaw that was valid when passed may become invalid if an overriding provincial statute is later put in place; and
- if a municipality takes action for which it does not have statutory authority, or that exceeds the limits of its authority, the courts could quash the action as being "ultra vires", that is, beyond the powers of the municipality.

### Canadian Charter of Rights and Freedoms

There is another constitutional implication for local government. Part 1 of the Constitution Act, 1982, contains the Canadian Charter of Rights and Freedoms. The Charter is relevant for all levels of government, including municipalities, in passing laws and taking other action.

## Human Rights Code

The Ontario Human Rights Code provides that every person has a right to equal treatment without discrimination because of race, colour, gender identity, sex, sexual orientation, disability, age and certain other grounds.

## SOURCES OF LAW

As a councillor, it is important to consider the statutory power for actions you plan to undertake. The law is complex and you should consult your municipal solicitor whenever any legal issue is in question. However, it is useful to have at least some familiarity with the sources of municipal law, and to try to keep up to date with the ever-changing body of law affecting municipal activity.

### Statute Law

An important source of law that will affect your municipality is found in the statutes or legislation put in place by the provincial government. Here are a few of special importance to municipalities.

#### Municipal Act, 2001

As previously mentioned, one of the most significant provincial statutes governing Ontario's municipalities is the Municipal Act, 2001 (unless otherwise specified, referred to in the rest of this section as the Act). This act gives your municipality flexibility to deal with local circumstances and to react quickly to local economic, environmental or social changes. An up-to-date, consolidated version of the Act is maintained on the provincial e-laws website at: [ontario.ca/e-laws](http://ontario.ca/e-laws).

#### Other General Acts

There are many other statutes that apply to municipalities but are focused on specific activities, such as the Planning Act, Line Fences Act, Building Code Act, 1992, Police Services Act, Fire Protection and Prevention Act, 1997, Safe Drinking Water Act, 2002, Accessibility for Ontarians with Disabilities Act, 2005, Emergency Management and Civil Protection Act, and the Ontario Works Act, 1997. These and most other government of Ontario statutes are available at: [ontario.ca/e-laws](http://ontario.ca/e-laws).

#### Acts Specific to Individual Municipalities

If your municipality was restructured, it may have its own special act that establishes particular aspects of its governance or structures (for example, the City of Toronto Act, 2006; the Town of Haldimand Act, 1999; the City of Hamilton Act, 1999; the Town of Norfolk Act, 1999; the City of Ottawa Act, 1999; and the City of Greater Sudbury Act, 1999).

## Private Acts

A number of private acts have been passed for specific municipalities. The individual municipalities applied for these acts in order to get specific powers not found in the general acts. They give flexibility in the way particular municipalities deal with issues that are of concern to them.

## Regulations

Regulations are laws made under legislation such as the Municipal Act, 2001 and the Municipal Elections Act, 1996. The power to make regulations is usually given to the Lieutenant-Governor in Council or a minister of the Crown.

Regulations often provide further direction as to how certain provisions of acts are to be applied. For example, a regulation made under section 216 of the Municipal Act provides more detail on making changes to and dissolving local boards, while a regulation made under the Municipal Elections Act authorizes the use of certain forms during the election period. Most Ontario regulations can be found on the Internet at: [ontario.ca/e-laws](http://ontario.ca/e-laws).

## Federal Statutes

There are some federal statutes, like the Canada Mortgage and Housing Corporation Act, which may affect your municipality's activities.

## Administrative Law

In addition to statute law, you should also be aware of administrative law. Administrative law generally applies to decisions by boards and tribunals and to the interpretation and exercise of powers given by legislation to bodies other than the legislature.

## Boards and Tribunals

Boards and tribunals are part of the executive branch of government. They are given authority by statute to make decisions about certain matters.

The Ontario Municipal Board, for example, holds hearings on such matters as long-term borrowing, land use planning, and boundary adjustments involving territory without municipal organization. Similar bodies that your municipality may deal with include the Ontario Labour Relations Board, the Workplace Safety and Insurance Board, the Assessment Review Board, the Conservation Review Board, and the Landlord and Tenant Board.

The decisions that result from these boards and tribunals form administrative case law that may significantly impact your municipal operations.

## Case Law

Even if you are aware of the statutes affecting your operations and of relevant administrative law, you still may not have a complete picture of the current law on specific issues. The meaning and scope of statutes are interpreted by various court decisions over the years, and this “judge-made law” or “case law” is also important.

## MUNICIPAL POWERS

The Municipal Act (the Act) and other provincial legislation give all municipalities a variety of powers. These powers fall into various categories:

- natural person powers;
- broad permissive powers;
- spheres of jurisdiction in a two-tiered system of local government; and
- specific powers.

The municipal powers set out in many statutes and regulations may be complex. As a result, you are encouraged to seek the advice of staff and your solicitor on specific municipal authority for any proposed action or bylaw.

### Natural Person Powers

The Act provides municipal government with natural person powers for the purpose of exercising their authority. Natural person powers give municipalities similar flexibility to that of individuals and corporations in managing their organizational and administrative affairs. These powers may help your municipality – without the need for more specific legislative authority – hire staff, enter into agreements and acquire land and equipment. For example, if a municipality has authority to establish a public transit system, it may use natural person powers to hire staff and buy buses. It is important to be aware that natural person powers are not an independent source of authority for a municipality to act in a particular area.

Municipalities, like other levels of government, also have powers that are not available to individuals. For example, municipalities have the ability to regulate or prohibit certain activities, require individuals to do certain things and establish a system of licenses, permits, approvals and registrations. Municipalities also have other essential governmental powers, such as the authority to levy taxes and to enforce municipal bylaws.

### Broad Permissive Powers

The Act provides municipalities with broad permissive powers, giving them flexibility in meeting their communities’ expectations and fulfilling their responsibilities.



A municipality has broad permissive powers to pass bylaws respecting the following matters:

1. Governance structure of the municipality and its local boards
2. Accountability and transparency of the municipality and its operations and of its local boards and their operations
3. Financial management of the municipality and its local boards
4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other act
5. Economic, social and environmental well-being of the municipality
6. Health, safety and well-being of persons
7. Services and things that the municipality is authorized to provide
8. Protection of persons and property, including consumer protection
9. Animals\*
10. Structures, including fences and signs\*
11. Business licensing\*

\* For two-tier governments (governments with a county or regional level as well as a local level), these powers are spheres of jurisdiction (areas where municipalities have authority) and not broad permissive powers. As such, they are subject to certain rules. Single-tier municipalities have all eleven broad permissive powers. Municipalities in two-tier systems have the first eight broad powers plus the spheres of jurisdiction.

### Spheres of Jurisdiction in Two-tiered Systems of Local Government

In addition to the broad permissive powers described above, municipalities in two-tier systems (municipalities where there is a county or regional level as well as a local level) are provided with spheres of jurisdiction (areas where municipalities have authority) to address the division of powers between upper-tier and lower-tier municipalities. The spheres of jurisdiction include rules about whether the upper-tier or lower-tier municipality (or both) may pass bylaws within all or part of each sphere, such as economic development services or public utilities. For single-tier municipalities, the spheres of jurisdiction were replaced with broad powers. The table at the end of section 11 of the Act sets out the details of how the spheres of jurisdiction are divided between the upper-tier and lower-tier municipalities: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK15](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK15).

For example, in some two-tier municipal systems, waste disposal is assigned exclusively to the upper tier and, as a result, the lower-tier municipalities cannot provide that service. In the case of the “animal” sphere of jurisdiction, the sphere is not assigned to the upper-tiers and therefore only lower-tier municipalities can exercise this power. In other cases, such as the “highways”

sphere of jurisdiction, the sphere is assigned non-exclusively to the upper-tiers so both the upper-tier and lower-tier municipalities can exercise the power.

Both upper-tier and lower-tier municipalities can exercise the broad permissive powers where a matter is not dealt with by the spheres of jurisdiction.

The spheres of jurisdiction are the powers to pass bylaws regarding/with respect to the following matters:

1. Highways, including parking and traffic on highways
2. Transportation systems, other than highways
3. Waste management
4. Public utilities
5. Culture, parks, recreation and heritage
6. Drainage and flood control, except storm sewers
7. Structures, including fences and signs.
8. Parking, except on highways
9. Animals\*
10. Economic development services\*
11. Business licencing\*

\* Again, because these three powers are spheres, they are not included as broad powers for municipalities in a two-tier system of government.

Animals, economic development services, and business licensing are not broad powers for municipalities in two-tiered systems of government because they are powers which were divided between upper-tier and lower-tier municipalities before amendments made by the Municipal Statute Law Amendment Act, 2006. For two-tier municipalities, these three powers remain spheres of jurisdiction.

If there is a conflict between the bylaws passed under a sphere by an upper-tier and a lower-tier, the upper-tier bylaw will prevail. This conflict rule only applies where both the upper-tier and the lower-tier bylaws are passed under a sphere. In any other circumstance, the upper-tier bylaw does not automatically prevail over a lower-tier bylaw with which it conflicts – for example, if an upper-tier bylaw passed under the broad powers conflicts with a lower-tier bylaw passed under the broad powers, there is no rule set out in the Act as to which will prevail.

## **Licensing**

Powers to license are set out in section 151 and other sections of the Act, including in the broad powers in sections 10 and 11. Municipalities have

authority to license many businesses – such as taxicabs, tow trucks, adult entertainment establishments, trailer camps, etc. A municipality may be able to impose conditions on a license.

Generally, municipalities do not have power to require a business license from:

- a manufacturing or industrial business except to the extent they are selling products or raw material by retail;
- the sale of goods by wholesale; or
- the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.

A municipality may be able to suspend a license for up to 14 days without a hearing if the municipality is satisfied that continuation of the business poses an immediate danger to health or safety of any person or to any property and if the conditions in the legislation are met. A municipality also could possibly suspend – without a hearing and for a period not more than 28 days – a license authorizing a business to operate on a highway or other municipal property for reasons that include:

- the holding of a special event;
- the construction, maintenance or repair of the property; or
- pedestrian, vehicular or public safety, or public health.

### Specific Powers

Specific powers are any powers given to municipalities, under any act, other than the broad permissive powers and the spheres of jurisdiction. Some specific powers are set out in the Municipal Act. These specific powers granted to municipalities fall into two categories:

1. Powers associated with the broad permissive powers or spheres of jurisdiction, dealing with: highways; transportation; waste management; public utilities; culture, parks, recreation & heritage; drainage & flood control; structures including fences and signs; parking; animals; economic development services; health, safety and nuisance; natural environment, etc.
2. Powers not associated with the broad permissive powers or spheres of jurisdiction, dealing with a number of areas, including enforcement of bylaws and changes to municipal boundaries.

Specific powers are also found in many other statutes such as the Building Code Act, 1992 and the Police Services Act.

## MUNICIPAL LIMITATIONS

As previously mentioned, the Municipal Act and other provincial legislation place some limitations on your municipality's powers. These limitations reflect common-law and provincial government policy. For example, in general:

- your municipal bylaws cannot conflict with or frustrate the purpose of federal or provincial statutes or regulations or legislative instruments (section 14);
- the broad permissive powers and the spheres of jurisdiction are subject to procedural requirements (rules) and other limitations existing in specific powers (section 15);
- except where expressly authorized, a municipality can only exercise its powers within its municipal boundaries; and
- the government may, by regulation, further limit certain powers of a municipality (section 451.1).

As well, in a two-tier system, a municipality:

- is generally prohibited from regulating non-municipal systems under six spheres of jurisdiction – public utilities; waste management; highways; transportation systems; culture, parks, recreation and heritage; and parking (subsection 11(8));
- is generally prohibited from using a sphere of jurisdiction to regulate services or things provided by the other tier that are authorized under that sphere of jurisdiction (subsection 11(7));
- cannot pass a bylaw under the spheres of jurisdiction or broad permissive powers if the other tier can pass the bylaw under a specific power (paragraphs 4 and 5 of subsection 11(4));
- cannot pass a bylaw under the spheres of jurisdiction or broad permissive powers if the other tier has the exclusive power to pass the bylaw under the spheres of jurisdiction (paragraphs 1 and 2 of subsection 11(4)).

## DELEGATION

The Act provides municipalities with broad authority to delegate (give to other individuals or bodies) powers and duties subject to certain restrictions. Delegation of minor matters may allow your council to streamline its decision-making and focus on the larger matters, making council's agendas more manageable. Delegation builds on a municipality's authority to create local bodies (such as advisory committees) to assist with local decision-making. The Minister of Municipal Affairs and Housing may make regulations restricting or imposing conditions on the delegation of powers.

In addition to administrative matters or matters that a natural person could delegate (for example, buying and selling real and personal property, hiring staff, and entering into agreements), council can delegate legislative powers under the Act and other listed acts (for example, noise, fencing, licensing, signage, and animal control bylaws) as well as quasi-judicial powers under the same acts (for example, revoking or suspending licenses) to certain persons or bodies subject to certain restrictions (sections 23.1 to 23.5).

Legislative and quasi-judicial matters can only be delegated to one or more members of council or a council committee, or to a body having at least two members. At least 50 per cent of members of a body must be council members and/or council appointees. Legislative and quasi-judicial matters can also be delegated to officers, employees or agents of the municipality, but they can only be delegated minor legislative powers such as temporarily closing a highway or imposing conditions on a license (section 23.2).

Powers that cannot be delegated include (section 23.3):

- appointing or removing statutory officers;
- imposing taxes;
- incorporating corporations;
- adopting or amending official plans;
- passing zoning bylaws;
- passing certain bylaws related to small business counselling and municipal capital facilities;
- adopting community improvement plans which authorize bonusing;
- approving or amending municipal budgets; and
- other powers as prescribed.

Council can revoke (take back) a delegation unless the original delegation bylaw specifically limits the power of council to take it back. A council cannot stop future councils from taking back a delegation.

Council can, within certain limits, designate a person or body (whether composed of themselves or another body) to conduct a review or appeal of the decisions of another person or body who has been delegated a power or duty. (Section 284.1).

## EXERCISING MUNICIPAL POWERS

Most councils consider it a best practice to exercise their municipal powers and conduct business in a clear and consistent fashion. As a councillor, you may find it helpful to become thoroughly familiar with the proper procedures and necessary conditions for calling and conducting council meetings, enacting bylaws and other resolutions, and administering and enforcing bylaws.

### Council and Local Board Meetings and Procedure Bylaws

Many of your municipality's important affairs are handled at council meetings. Every municipality and local board must pass a procedure bylaw to govern the calling, place and proceedings of their meetings (see section 238 of the Act for more information).

### Importance of Council Meetings

Generally, the powers of your municipality must be exercised by council by bylaw. Bylaws are passed at council meetings. Central parts of council decision making – including deliberation and voting – take place there. This makes it important that council meetings be properly called and organized, and that proper procedures be followed.

The effective and efficient conduct of meetings can help move the business of council along in a timely manner. One of the roles of the head of council is to act as the presiding officer (sometimes called chairperson) at council meetings, although council may assign this duty to another member of council with the consent of the head of council. The presiding officer is often responsible for following the agenda, preserving order, and enforcing any rules of procedure council may have adopted. Presiding officers (and other members) may wish to consider the following suggestions to help in chairing meetings more effectively:

- be aware of the rules of procedure, be timely, be impartial, be firm;
- prepare for the meeting by reviewing the entire agenda package; and
- recognize that the presiding officer is a member of council:
  - he or she may wish to vote on questions being addressed by council;
  - he or she may wish to temporarily step down as presiding officer during a meeting to debate an item on the agenda; and
  - respecting and communicating decisions that are made by council as a whole may be part of the role.

Council meetings are customarily either regular or special. Although the frequency of regular meetings is up to council, they are usually held at regular intervals and at locations set out in the procedural bylaw. An exception is the date of council's first meeting after an election, which is regulated by section 230 of the Act.

As noted above, section 238 requires both municipalities and local boards to have procedure bylaws to govern the calling, place and proceedings of their meetings including many of their committee meetings. Procedure bylaws must also provide for public notice of those meetings. The content of the procedure bylaw is generally up to the council.

Section 239 requires the decisions, resolutions and other proceedings at a meeting to be recorded regardless of whether the meeting is open or closed to the public. The municipal clerk or another appropriate officer must make these records of municipal meetings.

Section 240 of the Act provides for special meetings to be called, subject to the municipality's procedural bylaw. For example, the clerk might call a special meeting upon receipt of a petition from a majority of councillors. Many municipalities require a minimum notice period for holding a special meeting, with the time, location and purpose of the meeting clearly stated in the notice.

### **Open and Closed Meetings: Public Business**

The Act includes provisions related to the transparency and accountability of council as well as its local boards and committees, including the conduct of meetings and the public's right to attend them. Transparent decision making processes may be seen as part of the foundation of the good governance of a municipality.

A key transparency rule for municipalities is the requirement that most municipal meetings be open to the public. There are only a limited number of exceptions, for consideration of matters such as litigation, or personal matters about an identifiable individual.

See section 239 of the Act for more information about open meetings requirements: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK289](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK289).

The term "meeting" is partly defined in the Act, which currently provides that a meeting "means any regular, special or other meeting of a council, of a local board or of a committee of either of them." The definition is not the complete picture, however. When your council or board is making its decision about whether a gathering of its members is a "meeting", it may wish to keep in mind, among other things, the following important considerations:

- Is the subject matter of the meeting something traditionally municipal or something municipalities make decisions about?
- Are municipal resources being used?
- How many members or staff are present and what is their role?
- The importance of transparency in municipal decision making

Examples of considerations, sometimes called formalities, which may be less important include: whether the gathering was called a “meeting” or some other term (e.g. “workshop”); the premises where it takes place; whether it is within or outside the municipality.

Under sections 239.1 and 239.2 of the Act, a person may request an investigation of whether a closed meeting complied with the Act or a municipality’s procedure bylaw. The municipality may appoint an independent investigator who may report with recommendations to council. If the municipality does not appoint an investigator, the Ontario Ombudsman may investigate.

Police services, library and school boards have different rules about their meetings, which are found in other legislation.

### Quorum

A quorum is often understood to mean the minimum number of members needed to conduct business at a meeting. See section 237 of the Act for more information about quorum requirements for municipal councils: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK285](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK285).

Generally (there are exceptions) a quorum is a majority of members.

Quorum may be affected by members’ declarations of pecuniary interest, where they may have a personal financial interest in the matter. Members may be ineligible to vote at or participate in a meeting because of a declaration of pecuniary interest (see section 5 of the Municipal Conflict of Interest Act): [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90m50\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m50_e.htm).

However, if, because of declarations, there is not a quorum of members for a meeting, the Municipal Conflict of Interest Act makes the remaining number of members at the meeting a quorum. The remaining number must not be less than two (see section 7 of the Municipal Conflict of Interest Act).

An application to court to address the matter may be possible if the remaining number of members is less than two (see section 7 of the Municipal Conflict of Interest Act).



Finally, if council is unable to hold a meeting for a period of 60 days or more, because of a failure to obtain a quorum, the Minister of Municipal Affairs and Housing may declare all the members' seats vacant and a by-election shall be held (more information may be found in section 266 of the Municipal Act: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK320](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK320)).

## Conflict of Interest and Ethical Matters

Local members (including councillors and members of local boards) have legal and ethical duties to consider in relation to conflict of interest. Some of these are found in the Municipal Conflict of Interest Act, but other related rules or codes may also apply to local members (for example, a local Code of Conduct for councillors).

The Municipal Conflict of Interest Act sets out what may be regarded as a primary set of 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.

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.

Potential penalties for contravention of the Act include removal from office. The courts decide whether or not a contravention of the Act has taken place.

See the Municipal Conflict of Interest Act for more information: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90m50\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m50_e.htm).

## Codes of Conduct

Some municipalities have codes of conduct for members of council and local boards. They may also have other procedures, rules and policies governing the ethical behaviour of those members. It is generally up to the municipality to determine the content of its code of conduct (if it chooses to have one) and its style – for example, a general set of principles, or a more detailed set of rules on specific issues. Some common issues that codes address include the use of municipal resources, gifts and benefits, and conduct at council meetings.

## Privacy and Confidentiality

Personal privacy and other confidentiality issues are an important practical and legal consideration for municipal councillors and staff. As a councillor (as with the other matters in this guide), you may wish to become familiar with your responsibilities in this area, as well as with the relevant legislation and policies.

The Municipal Freedom of Information and Protection of Privacy Act is a primary statute for privacy and confidentiality: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90m56\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m56_e.htm). It sets out rules for collection, use and disclosure of personal information. According to these rules, councillors (and staff), in most circumstances, would protect personal privacy and only collect, use and disclose personal information in accordance with those rules. For example, depending on circumstances, councillors and staff may or may not be authorized to obtain personal information in the course of their duties. This might mean, among other things, that at times councillors could not obtain this kind of information from staff.

Municipal freedom of information legislation also regulates confidential information of other kinds (i.e. in addition to personal information). Other statutes and laws (including local bylaws) also regulate personal and other kinds of confidential information.

Councillors who may have received personal or other confidential information in the course of their duties will have related responsibilities. These generally include protecting and safeguarding the information. Councillors may wish to check with municipal staff about appropriate measures and the municipality's practices – for example, providing for physical security to help prevent unauthorized disclosure or loss of confidential information.

## BYLAWS AND RESOLUTIONS

The powers of your municipality are generally exercised by either bylaw or resolution. Bylaws are the primary form of action.

Generally, bylaws must be:

- signed both by the head of council or presiding officer of the meeting at which the bylaw was passed and by the clerk; and
- under the seal of the corporation.

(See the Municipal Act and other legislation, including sections 5 and 249 for more information).

Additional requirements may apply before a bylaw can be passed, such as holding a public meeting, giving public notice, or obtaining the approval of a provincial ministry or board.

Many council statements are recorded in a resolution as an expression of an opinion of council. Resolutions are generally submitted in the form of a motion and adopted by majority vote. The formalities for adopting a resolution may not be as strict as those for passing a bylaw.

As noted above, resolutions may be used to record your council's views on a specific issue. Such resolutions often express the municipality's position on various issues or concerns about existing government policy, regulations or funding or they may call for changes in the provincial-municipal relationship. After adoption, they are sent to the appropriate government agency, association or MPP.

The powers of your council are generally exercised by bylaw for matters or for actions that will affect the public. If in doubt, councils may consider whether passing a bylaw is the safest approach.

## PROCEDURAL REQUIREMENTS

Proper procedures are important when enacting or amending bylaws. For example, before passing a bylaw, generally, an open council meeting would be in session and there would be a quorum of members in attendance.

While councils have been known to pass some bylaws on the day they were first presented, a longer time may be needed for practical or legal reasons. As examples, your municipality's procedural bylaw may require advance notice of the introduction of most bylaws, and statutory rules require two readings of certain bylaws (see section 75 of the Drainage Act).

## LEGAL CONSIDERATIONS

Municipalities are responsible and accountable governments, and many important legal considerations may apply to their actions and decisions. Here is a brief description of a few of them. As with any legal matter, people with a specific legal question may wish to contact their own legal advisor.

### Hearings

For some of its actions – for example, revoking a business license – council may decide it needs to hold a hearing for legal or other reasons. These reasons might include fair treatment of the people involved (for example, an individual license holder).

The Statutory Powers Procedure Act sets out procedural rules that may apply to such hearings. These rules include that most proceedings would be held in public (some might be confidential), and that parties involved would be given reasonable notice.

Municipalities may wish to consider use of their delegation powers in relation to hearings (see, among other provisions, sections 23.1 to 23.5 of the Municipal Act for more information: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK34](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK34)). Some councils have delegated their authority to hold hearings.

### **Good Faith, Reasonableness and the Courts**

Generally, municipal decisions must not be based on fraud, oppression or improper motive. Courts may decide to quash a bylaw based on bad faith. The courts decide about good faith and other legal issues case by case. For example, while generally a bylaw passed by council in good faith cannot be quashed or reviewed by the courts because of unreasonableness of the bylaw (see section 272 of the Municipal Act), the courts have held that unreasonableness might be evidence of bad faith.

## **ENFORCEMENT OF BYLAWS**

Navigating the legal complexities of enacting a bylaw is only the first step. In practice, a bylaw will have little value unless your municipality has the determination and the means to enforce it. Before a bylaw is passed, careful consideration of the bylaw – including its intended purpose and outcome – may be helpful. Implications of enacting the bylaw may include such issues as:

- How will the bylaw affect the community?
- Will it impose restrictions or hardships on particular areas or groups of people?
- Will public reaction be favourable? If not, how will council respond?
- What will it cost to administer the bylaw?
- Can existing staff be expected to handle the additional responsibilities, or will more staff be required?
- Is the municipality prepared to enforce the bylaw and enforce it consistently?

### **General Responsibility for Enforcement**

#### **Municipal Enforcement Personnel**

Council may decide to hire one or more bylaw enforcement officers. Council may wish to consider if these people will act only on complaints or will actively look for infractions. In either case, your municipality will benefit from employing bylaw enforcement officers that have diplomacy, tact, and negotiating skills because many complaints can be resolved without going to court.

### Action by the Public

If a person believes that there has been a contravention of a bylaw and is dissatisfied with the level of enforcement provided by a municipality, they may wish to consider taking steps themselves to bring the alleged offender before the courts. To do so, the person would need to appear before a justice of the peace or provincial judge.

### Action by Police

Council sometimes calls on the local police force or the Ontario Provincial Police, where it provides local police services, to enforce bylaws. You should keep in mind that the police have extensive responsibilities and your council may wish to consider other means of enforcement.

### Penalties

The Municipal Act provides that a municipality may establish a system of fines for offences under a bylaw of the municipality (section 429). This includes:

- designating an offence as a continuing offence and establishing a minimum and maximum fine for the offence for each day or part day that a contravention continues;
- establishing escalating fines for repeat convictions for the same offence; and
- establishing special fines designed to reduce or eliminate any economic advantages resulting from a contravention.

However, a municipality cannot establish fines for a bylaw offence for which specific fines are set out in another Act (subsection 429(4)).

The municipality can also establish a procedure for voluntary payment of penalties out of court for contraventions of bylaws related to the parking, standing or stopping of vehicles, or related to animals being at large or trespassing (section 432).

### Other Bylaw Enforcement Powers

In addition to penalties, other powers related to bylaw enforcement include:

- powers of entry for purposes of inspection to determine if a bylaw is being complied with, and, with a search warrant, to search for and seize evidence (for example, sections 435 – 439: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK513](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK513));
- a municipality may make an order requiring certain persons to discontinue a bylaw contravention and to undertake work to correct a contravention of a bylaw; and the municipality can carry out work at the person's expense if the person is in default of a work order (sections

444 – 446) [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK525](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK525);

- a municipality, local board or taxpayer can ask the courts to restrain bylaw contraventions (section 440) [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK519](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK519);
- a municipality can ask the courts to close a premises to any use for up to two years if an owner is convicted of knowingly carrying on a trade, business or occupation on the premises without a license (section 447) [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK529](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK529); and
- if the clerk of a local municipality is notified by a police force that a building in the municipality contained a marijuana grow operation, the municipality must ensure that an inspection is conducted of the building in accordance with the Act (section 447.2) [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK531](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK531).

All of the above powers are subject to various restrictions and conditions as set out in the Act. When contemplating one of these powers, municipal council should check the details of the legislation and consult with municipal staff and/or the municipal solicitor.

As previously mentioned, other statutes such as the Building Code Act, 1992 and the Fire Protection and Prevention Act, 1997 also contain bylaw making and enforcement powers. Municipal council should consult with the appointed staff and your solicitor regarding their obligations, operation and limitations.

## ACTIONS AGAINST THE MUNICIPALITY

In addition to actions your council can take against individuals within your municipality, there are actions citizens can take against your municipality.

### Ultra Vires

Under section 273 of the Municipal Act any person may apply to the Superior Court of Justice to quash a bylaw in whole or in part for illegality.

### Civil Action for Damages

As a corporation, your municipality may be sued for failure to carry out, or negligence in the conduct of its statutory duties. For example, damage to vehicles caused by poorly maintained roads, or an injury suffered in a fall on an icy sidewalk, could result in a civil suit. You and the rest of council should ensure that your municipality has adequate insurance to cover this type of civil action.

The legislature and the courts have come up with certain restrictions to protect municipalities from litigation. For example, subsection 44(9) of the Act limits potential municipal liability for personal injury caused by snow or ice on a sidewalk to cases of “gross negligence”.

## Risk Management

More and more, municipalities are adopting risk management strategies to address public liability. Generally, risk management strategies seek to minimize the effects and costs of public liability suits against a municipality. This involves identifying potential hazards and implementing the appropriate measures to reduce or eliminate them in your community.

You may find that the biggest areas for potential liability are public works or parks and recreational services. Risk management initiatives therefore often relate to these service areas.

## Appeals

Where specifically allowed by statute, an individual may appeal municipal decisions to the courts and to certain quasi-judicial bodies such as the Ontario Municipal Board and the Assessment Review Board. Several examples can be found in land use planning, with appeals of decisions made by committees of adjustment, land division committees and councils.

## Judicial Review

This form of court action is 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. In these circumstances, an individual may take action to bring the matter before the courts for a legal remedy.

## KEY TIPS

- Be aware of the legal framework within which your municipality must operate and the need for legal advice.
- Familiarize yourself with provincial legislation, such as the Municipal Act, Municipal Conflict of Interest Act and the Planning Act, and how they relate to your municipality, and review your municipality’s existing bylaws.
- Municipal non-legal staff, however knowledgeable, should not be expected to provide you with legal advice; that is the responsibility of your municipal solicitor.
- Make sure your municipality has adequate insurance coverage to protect both staff and councillors in the exercise of their duties.

- Become familiar with how to access federal and provincial statutes, regulations and orders online: [ontario.ca/e-laws](http://ontario.ca/e-laws).
- You may wish to support the development or enhancement of a basic municipal library in hard copy or online which includes your municipality's documents including:
  - minutes of meetings
  - official plans
  - strategic plans
  - budgets
  - performance measurements
  - bylaws
  - resolutions
  - policies
  - studies
  - inventories
  - registries, etc.



## SECTION 4: THE FISCAL CONTEXT

Municipal governments face a constant balancing act in delivering new and improved services and facilities to local residents in a way that is fiscally sustainable. Pressures may come from servicing growing urban regions as well as from maintaining and replacing aging infrastructure. To meet or balance these demands, your municipality must manage its finances effectively.

The fundamentals of effective finance management include:

- an effective cash management and budgeting system;
- effective capital financing policies;
- regular financial reporting to council; and
- regular programs, services, and delivery reviews.

### FINANCIAL ADMINISTRATION

#### Budgeting

Budgets are powerful management tools. They help your municipality define levels of municipal services and identify how revenues will fund expenses. Budgeting involves prioritizing projects, programs and service levels in light of limited financial resources.

Your council must prepare and adopt an annual budget that includes estimates of all amounts required during the year (see sections 289 and 290 of the Municipal Act, 2001, referred to throughout this section as the Act: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK349](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK349)). Your municipality has flexibility as to the format and level of detail of its budgets. While the operating and capital components of budgets are inter-related, some municipalities prepare them separately.

#### Essential Elements of Budgeting

Budgeting involves at least three key elements: planning, co-ordination and control.

### 1. Planning

This may begin with the development of broad statements of your municipality's needs and what it hopes to accomplish for several years ahead. This means thinking strategically, clarifying the challenges facing your municipality, and setting priorities. This may help provide a framework for your municipality to identify:

- services or functions that must be provided;
- services or functions currently provided that do not need to be provided; and
- services or functions not being provided that could be provided.

### 2. Coordination

Most municipalities have a budget committee to coordinate the budgeting process. The budget committee includes part or all of council and senior staff and usually has the mandate to:

- produce and circulate an approved statement of municipal priorities and goals to department heads;
- provide technical budgeting assistance through finance staff to departments;
- evaluate individual budgets submitted to the committee; and
- consolidate departmental and local board budgets into an overall budget document for council's review and consideration.

### 3. Control

Once a budget is approved, quarterly or monthly reports to management and council may help show whether actual expenditures and revenues conform to the budget. Significant differences may be addressed and a course of action prepared and approved to get back on track by alleviating or at least minimizing the variances. Once council adopts the budget, it may serve multiple purposes as a municipal policy document, an operations guide, a financial plan, and a communications tool.

## Preparation of the Budget

The time of year when budgets are started and finalized varies among municipalities. However, the steps usually taken include:

- establishing a budget timetable;
- initiating a budget plan, supporting data and guidelines;
- evaluating/reviewing draft estimates;
- compiling an overall budget document;

- approval of the budget and levying bylaw(s); and
- budget implementation and budgetary control.

Check with your municipal finance staff to see how your municipal budgeting process is completed.

### **Operating Budgets**

Operating budgets are normally used to plan for your municipality's day-to-day expenditures, such as salaries, wages, benefits, heat, hydro, maintenance of buildings and infrastructure. As a policy document, your operating budget may include a statement of budgetary policy in the form of goals, objectives and strategies. As a communications tool, the budget may help provide summary information that can be used by the media and the public.

As an operations guide, operating budgets often attach or include a chart of the municipal organization, a description of workforce organization (what each municipal department, board and commission does) and enough data to provide a basis for comparison (for example, the previous year's budget, spending in the previous year, and current year-to-date spending on operations).

As a financial plan, a budget usually includes projected operating expenditures and revenue sources for the period covered, and it is formatted in such a way that it parallels a municipality's accounting and financial reporting system. This may help with the monitoring and evaluation of the budget performance.

### **Capital Budgets**

A capital budget typically provides for existing infrastructure, such as libraries, storm sewers, recreation centres, parks and roads to be maintained, or new infrastructure needs to be met in the future. It may set out the specific capital projects to be approved for the budgetary period, such as capital improvements, land acquisitions, new facilities and equipment, and identifies a source of financing for each.

Through capital budgets, your municipality can plan future operating budget expenditures, debt repayment and potential reserve fund needs to manage the financial position of your municipality over a specific period of time.

The capital budget process typically calls for a coordinated effort between municipal departments and results in a financing plan for the new construction, acquisition or replacement of municipal assets (a section on asset management planning is provided further on [page 72](#) of this guide).

### Public Accounting Standards

Municipalities are required by legislation to prepare annual financial statements according to the Public Sector Accounting Board (PSAB)'s recommended accounting principles (see section 294.1 of the Act: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK355](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK355)).

PSAB acts as a national standard-setting authority that is committed to addressing accounting and financial issues of local governments: <http://www.frascanada.ca/public-sector-accounting-board/>. As a national organization, PSAB helps to ensure completeness and consistency in financial reporting across Canada. Although PSAB does not prescribe the way municipalities budget, it is prudent to keep these principles of financial reporting in mind when preparing the budget.

Since 2009, municipalities have used PS 3150 – Tangible Capital Assets (TCA) for external reporting. PSAB requires municipalities to record TCAs on the statement of financial position and to amortize (expense) the asset over its useful life on the statement of operations: <http://www.frascanada.ca/standards-for-public-sector-entities/resources/reference-materials/item14603.pdf>. This has implications for municipal budgeting as amortization expense is expected to be considered when preparing a budget. According to the new PSAB standard, municipalities are also expected to consider post-employment benefits and solid waste landfill closure expenses when preparing a budget. (See PS 3255 and PS 3270 respectively.)

The Act was changed and Ontario Regulation 284/09 (Budget Matters – Expenses) put in place to reflect the new PSAB standards. The regulation states that a municipality may exclude certain expenses (amortization expense, post-employment benefit expense and solid waste landfill closure and post-closure expense) from the budgeted amounts for which revenue must be raised.

Municipalities must include “surpluses” or “deficits” (as determined according to legislation) from the previous year's operations in its budgeting process (see sections 289 and 290).

Section 291 of the Act allows municipalities to prepare and adopt a multi-year budget covering a period of up to five years. Generally, multi-year budgets must comply with the provisions of sections 289 or 290. The municipality must review and re-adopt multi-year budgets each year.

### Financial Reporting to the Public

Municipalities are required by legislation to publically publish the audited financial statements of the municipality for the previous year within 60 days of receiving them (see section 295(1) of the Act).

## Annual Financial Statements

Annual financial statements provide information on a municipality's financial position:

- its assets (generally, what a municipality owns and controls) and liabilities (generally, what a municipality owes);
- its net debt, its accumulated surplus or deficit;
- its tangible capital assets and other non-financial assets;
- a meaningful summary of the sources, allocation and use of municipal economic resources;
- how the activities of the period have affected the municipality's net debt;
- how municipal activities were financed; and
- how cash requirements were met.

Each indicator gives the readers of the financial statements information about the status of the municipality's finances.

Financial statements must include a statement of financial position, a statement of operations, a statement of change in net debt and a statement of cash flow. Additional supplementary information is provided in schedules and notes to the financial statements.

## Financial Information Return (FIR)

The Financial Information Return (FIR) is the main document used by the Government of Ontario to collect financial information from municipalities on an annual basis.

All municipalities are required to submit FIR data to the Ministry of Municipal Affairs and Housing (MMAH) by May 31st of each year. If your municipality does not meet the reporting deadlines, it may not be able to access provincial funding programs. The FIR captures detailed standardized financial and statistical information that allows comparisons with other municipalities over time.

The FIR data is used by MMAH and other ministries for a number of purposes, such as:

- calculating grant amounts;
- developing provincial fiscal policy;
- developing municipal finance policy;
- monitoring local sector performance;

- examining the financial status of municipalities;
- preparing municipal debt limit reports;
- forecasting and budgeting;
- preparing local economic profiles and information on local services and service levels for use by industry; and
- requests for financial and statistical data.

You can view the data by municipality, by schedule or by multi-year. A provincial summary showing all the municipal returns is available online at: [oraweb.mah.gov.on.ca/fir/welcome.htm](http://oraweb.mah.gov.on.ca/fir/welcome.htm).

The information is also used by municipalities, municipal associations, the financial community, the academic community, the Ontario Municipal Board, ratepayer groups, credit rating agencies and consulting firms.

The data is also useful from a municipal perspective:

- for 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); and
- to support land use planning, strategic planning, and asset management planning.

The information contained in the FIR is invaluable as a decision making tool for council. For example, during budget deliberations, you may be concerned about the impact of certain decisions on individual ratepayers. Data about other, similar municipalities can be taken from the FIR to give you a sense of relative taxation level. This is one of many ways the data can be used. Council can also request the CAO to produce a variety of reports using data from the FIR. See [Appendix A](#) for a list of sample questions.

The forms are prescribed by MMAH, which also provides detailed instructions on how to complete them, as well as other advice and assistance that may be needed.

### **Reporting Requirements for Service Managers – Housing**

The Service Manager Annual Information Return (SMAIR) is a summary of financial, operating and statistical information for the period January 1 - December 31 for all types of Service Managers (SMs) ([municipalities](#), [DSSABs](#), [single-tier](#), [regional and county](#)).

The province uses this to report to Canada Mortgage and Housing Corporation. The HSA outlines a Service Manager's responsibilities for completing a SMAIR.

The SM must also complete the following reports for all transferred housing programs and projects (includes legacy programs):

1. SM Identification
2. SM Representation Report (attests to compliance with the HSA)
3. Schedule of Funding (funding received by program type)
4. Combined Statistical Information (number of households assisted, targeted etc.) by program type
5. SHRRP (Social Housing Renovation and Retrofit Program)
6. Service Level Standards (actual household types verses legislated)
7. Centralized Wait List Information (summary of waiting list by household and program type, seniors, family etc.)
8. Housing Allowance/Rent Supplement Annual Reconciliation Schedule

### **Municipal Performance Measurement**

Municipal performance measurement enhances municipal accountability by measuring service delivery in key areas. It is also a management tool; it helps municipalities track their performance over time and identifies service areas that may need further attention – due to either strong or weak performance. MMAH encourages municipalities to use FIR data as well as data from internal performance measurement systems to inform the budgetary process.

### **The Municipal Auditor and the Audit Function**

Municipalities must appoint an auditor licensed under the Public Accounting Act, 2004. A municipal auditor shall not be appointed for a term exceeding five years. The auditor must not be an employee of a municipality or local board of a municipality. (See section 296 of the Municipal Act.)

The municipal auditor’s responsibilities may extend to the municipality’s local boards, as well as to a local board of more than one municipality (sometimes called a joint board). A municipal auditor reports to council.

### **The Auditor’s Responsibilities**

The auditor’s role in the financial management of your municipality is important. His or her responsibilities include:

- annually auditing the accounts and transactions of the municipality and its local boards, and expressing an opinion on their financial statements based on the audit; and
- performing duties for the municipality or local board, as required.

In connection with these responsibilities, a municipal auditor has special powers that may include rights of access to records, rights to require information from council or municipal officers, and rights to require a person to give evidence under oath, and the ability to attend certain meetings. (See section 297 of the Act) [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK358](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK358).

### **The Audit Committee**

Most municipalities form an audit committee to prepare for the auditing process and to assist the auditor. Its members usually include one or more councillors, the treasurer, and the chief administrative officer (if the municipality has one). The committee reviews financial statements, discusses any matters deserving attention, reviews findings of the audit and makes general inquiries of both staff and the auditor to get more information about financial issues.

## **FINANCIAL TRANSACTIONS**

There are four main components to the financial statements of a municipality: statement of financial position, statement of operations, statement of change in net financial assets (debt), and statement of cash flow.

### **Statement of Financial Position**

The statement of financial position provides information about the municipality's financial position in terms of its assets (what the municipality owns or controls) and liabilities (what the municipality owes) at the end of the fiscal year or accounting period. It reports the municipality's net debt, and its accumulated surplus or deficit, because these figures are indicators that can be used to assess a municipality's financial position. Net debt shows the amount of future revenues that will have to be raised to pay for past transactions and events. The accumulated surplus is the primary indicator of the resources (financial and physical) the municipality has available to provide future services.

### **Reserves and Reserve Funds**

Reserves and reserve funds are included in the accumulated surplus of the municipality. Reserves and reserve funds are used, among other things, to account for transactions which, for legal or policy reasons, require that amounts specifically earmarked for a particular project or purpose be identified and spent on that project or activity.

Usually, the use is specified when the reserve or reserve fund is established. Reserve fund uses generally are not converted to other uses without council's approval.



## Statement of Operations

The statement of operations reports the revenues, expenses, results, and surplus or deficit from operations in the fiscal year or accounting period. The statement shows the cost of municipal services provided in the period, the revenues recognized in the period and the difference between them. It summarizes cost-of-service information at a functional level – for example, social services, recreation, general government, transportation, and protection, to name a few.

## Statement of Change in Net Financial Assets (Debt)

The statement of change in net financial assets (debt) explains the difference between the annual surplus or deficit and the change in net financial assets (debt). It tracks what the municipality has spent to acquire tangible capital assets and inventories of supplies. It reports on the disposal of tangible capital assets and the use of inventory.

## Statement of Cash Flow

The statement of cash flow identifies where cash came from, shows how cash was used and provides details on changes in cash and cash equivalents since the previous reporting period. Sources and uses of cash are reported by major activity: operations, capital transactions (acquisitions and disposals), investments (purchases and disposals), and financing (debt proceeds and payments).

# SOURCES OF MUNICIPAL REVENUE

Revenues may be seen as income for your municipality. They are typically used to pay for the services that the residents of your municipality receive. Some examples of revenue that municipalities may receive include:

- property taxes;
- special area taxes;
- payments in lieu of taxes;
- conditional and unconditional grants;
- user fees and charges for services such as recreational and cultural facilities (libraries, pools, etc.) and local improvement charges (sidewalks, etc.);
- fees for licenses, permits and rents;
- fines and penalties;
- investment income; and
- development charges.

Payments in lieu of taxes are payments made to municipalities for certain properties exempt from municipal taxation, such as certain property owned by the province or the federal government.

## **Property Taxes**

The property tax is your municipality's main source of revenue. It is calculated by your municipality based on two main components – a tax base, determined in accordance with the Assessment Act, and tax rates, determined by your municipality, but subject to provincial rules.

### **Assessment (Tax Base)**

The base for property taxation is the assessment roll. The *Assessment Act* authorizes the establishment of a value for real property and provides rules on how this value is derived.

Properties are assessed by the Municipal Property Assessment Corporation (MPAC). Every municipality is a member of this corporation and pays MPAC for the services it receives.

The assessment of land is based on current value, generally as measured by the price that would be paid by a willing buyer to a willing seller at arm's length.

Section 19.2 of the Assessment Act provides that the value of land is to be updated every four years. Section 19.1 of the Act provides for the phasing in, over a four-year period, of an eligible increase in the current value of land that happens as a result of a general reassessment.

If a ratepayer in your municipality believes that the assessed value, as shown on his or her notice of assessment, is not appropriate, there are ways they can address it. A ratepayer should be encouraged to contact MPAC's Customer Contact Centre to discuss their concerns. If they still disagree with their assessed value, the ratepayer could then ask MPAC to review their assessment by filing a Request for Reconsideration. For more information on the reconsideration and appeal process and related deadlines, see MPAC's website: [mpac.on.ca](http://mpac.on.ca).

Section 7 of the Assessment Act and Ontario Regulation 282/98 set out the seven main categories of property classes on the assessment roll. Your municipality can also adopt optional classes within the multi-residential, commercial, and industrial classes.

### **Tax Rates**

A tax rate is the rate applied to each dollar of taxable assessment to determine the amount of taxes to be paid. In simple terms, a tax rate of 1.23000% raises 1.23 cents per dollar of assessment.

Tax rates are a tool to generate revenues for:

- single or lower-tier municipalities;
- upper-tier municipalities; and
- primary and secondary education.

For each of these purposes, there are separate tax rates for each property class within municipalities. With some limits, municipalities may set their own municipal tax rates. However, education tax rates are set annually by the province.

### **Special Area Taxation**

Section 326 of the Act allows municipalities to impose special area rates to recover the cost of a special service for only a designated area of the municipality. A special service is a service that is not generally provided throughout the municipality, or is provided in a different way or at a different level in other parts of the municipality. Currently, Ontario Regulation 585/06 prevents certain health programs and services from being area-rated.

### **Setting Tax Rates**

To minimize the possibility that taxes are shifted arbitrarily from one property class to another, the provincial government restricts the relative tax burden on the different property classes in a number of ways such as tax ratios, transition ratios and ranges of fairness.

### **Tax Ratios**

A tax ratio is the ratio that the tax rate for a property class must be in relation to the residential class tax rate. They determine how much of a municipality's tax burden is borne by each of the property classes. Municipalities with authority to set tax ratios are limited by transition ratios and tax ratio ranges of fairness in accordance with the Act.

### **Transition Ratios**

A transition ratio indicates the historical share of the municipal levy associated with each property class and represents the maximum tax ratio values the municipalities can adopt. Tax ratios can only be equal to or less than transition ratios.

### **Ranges of Fairness**

The ranges of fairness are target levels of taxation prescribed by the province for each property class to encourage the reduction of tax rate differences and tax shifting between classes. If the property class tax ratio falls outside the range of fairness set for that class, the municipality must either maintain the existing tax ratio or adjust the ratio so that it moves closer to the range

of fairness. A municipality cannot move its tax ratios away from the ranges of fairness.

### **Tax Restrictions on Multi-residential, Commercial and Industrial Classes**

Tax ratio limits (known as municipal levy restriction thresholds) also apply with respect to the commercial, industrial and multi-residential property classes. Municipalities with a property class tax ratio that is above the applicable limit cannot impose general levy increases on the property in the class until the ratio is brought to or below the limit. Ontario Regulation 73/03 sets out the tax ratio limits and provides partial relief from the levy restriction.

For more information regarding tax ratios please refer to Part VIII of the Municipal Act: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK365](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK365).

### **Reduced Rates for Farm and Managed Forest Classes**

Properties in the Farm and Managed Forests property classes are taxed at 25 per cent of the residential rate established in the municipality. Upper-tier and single-tier municipalities can further reduce the municipal tax rate on the farm property class to below 25 per cent of the residential tax rate.

### **Tax Tools**

To help lessen tax shifts resulting from reassessments or provide relief to certain types of properties, your municipality has several tax tools under the Municipal Act. These tools are summarized as follows:

#### **Optional Classes**

As stated earlier, single-tier and upper-tier municipalities have the flexibility to adopt, in addition to the standard property classes, optional classes, which give municipalities more flexibility in spreading the municipality's property tax burden within the multi-residential, commercial and industrial property classes.

#### **Graduated Tax Rates (Banding)**

Single-tier and upper-tier municipalities have the authority to create two or three bands of assessments for commercial and industrial properties for the purposes of applying graduated tax rates. Graduated tax rates allow your municipality to shift some of the tax burden from lower-valued properties to higher-valued properties while maintaining overall class revenues.

#### **Tax Ratio Flexibility**

Municipalities have the flexibility to increase tax ratios on business classes to prevent tax shifts from business taxpayers onto residential taxpayers as a result of reassessment. However, this flexibility does not permit municipalities to further increase the burden on business owners.

### Lowering Tax Ratios

Your municipality can alter your tax ratios toward or within the range of fairness established by the provincial government.

### Tax Relief for Low-Income Seniors and Low-Income Disabled Homeowners

Under the Act, single-tier and upper-tier municipalities must pass a bylaw to provide for deferrals or other relief from increases resulting from reassessment on residential properties owned by low-income seniors or low-income disabled persons. An upper-tier bylaw providing for such relief also covers the tax increases for lower-tier purposes.

### Rebates for Charities and Tax Reduction for Heritage Properties

Under the Act, single-tier and upper-tier municipalities must establish a program to provide property tax rebates to registered charities located in commercial and industrial properties, and may provide rebates to similar organizations, located in any property type as determined by the municipality: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK426](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK426).

Local municipalities can also provide property tax reductions or refunds to owners of eligible buildings designated under the Ontario Heritage Act as being of architectural or historical value: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK431](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK431).

### Tax Rebates for Vacant Commercial and Industrial Buildings

Municipalities must provide property tax rebates for vacant commercial and industrial buildings. The Act [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK428](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK428) and regulation provide details regarding eligibility criteria, the application process, and how the rebate is to be calculated.

### Mandatory Capping for Multi-Residential, Commercial and Industrial Classes

In spite of the tax tools described above, municipalities must limit tax increases from re-assessment of properties in the multi-residential, commercial and industrial classes to five per cent of the prior year's annualized taxes. However, upper-tier and single-tier municipalities may have options to:

- increase the amount of the annualized cap from 5 per cent up to 10 per cent per year; and
- remove properties from capping and clawback in certain circumstances.

Municipalities must pass a bylaw adopting these options for each year that they wish to use them. For additional information regarding mandatory tax

capping, refer to Part IX of the Act: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK386](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK386) and related regulations.

### **Tax for General Municipal Purposes**

Simply put, tax rates are calculated after the budget is determined. In summary, estimated revenues from all sources other than property taxes are subtracted from the estimated total expenses to calculate the tax levies (or rates). Deficit and surplus must also be added. Then the tax rates are calculated. Even in cases where the budget remains constant from one year to the next, taxes may change because of property reassessments.

### **Tax for Region, County and School Purposes**

The tax rate for any upper-tier municipality (county or regional government) is calculated by the upper-tier in the same way as the local levy for general municipal purposes by the lower-tier (local government) or single-tier. In other words, municipalities determine their total expenditures, subtract their non-tax revenues, add any surplus/deficit amounts and then calculate their tax rates. The upper-tier rate for each class of property must be the same for each lower-tier municipality. The amounts raised by each lower tier depend on the amount of assessment and the types of properties located within its boundaries. Upper-tier taxes are collected by the lower-tiers and are given in instalments to the upper-tier.

For schools purposes, the province sets a single education tax rate each year for residential, multi-residential, and new multi-residential classes across the province. (Farm and managed forest classes are set at 25 per cent of the residential rate).

Education tax rates for business property classes are set annually for each individual upper-tier and single-tier municipality. All education taxes are collected by the local municipality and given to the local school boards on a quarterly basis.

### **Tax Billing**

Each year, MPAC provides every municipality with a copy of the assessment roll to calculate taxes for the following year. The roll includes the following information about each assessed property:

- the roll number;
- description/identification of the property;
- the name of the property owner;
- the property's assessed value;
- the type of assessment (for example, residential, commercial, industrial);

- the tax qualifier (for example, taxable, tax exempt, exempt but eligible for payment in lieu); and
- in the case of residential properties, the type of school board the property owner supports under the *Education Act*.

The roll is known as the “returned assessment roll for the year.” Under subsection 340(1) of the Act, the treasurer of your municipality must prepare a “tax roll” based on the last returned assessment roll for the year. For the most part, the tax roll shows the contents described above. It also needs to show the total taxes payable and a breakdown of the general and special local municipal taxes payable, for general and special upper-tier taxes, for each school board, and for all other purposes.

The tax roll is later changed to show any adjustments made to it from assessment appeals, errors and omissions and supplementary assessments. For tax-rate-setting purposes, single-tier and upper-tier municipalities can use either the returned roll assessments or the assessments on the tax roll, provided the adjustments have been made before the tax rating bylaw has been set. In two-tier systems, local municipalities must use the local assessments that were used by the upper-tier in setting their tax rates.

Preparing tax bills is the responsibility of your treasurer. Only lower-tier and single-tier municipalities issue tax bills to property owners. The treasurer must send a tax bill to every property owner at least 21 days before any taxes shown on the tax bill are due. The tax bill separates the school levies and upper-tier levies from the general local levy and other special rates.

To support municipalities in their property tax analysis, planning and billing, the province provides the Online Property Tax Analysis (OPTA) system to municipalities free of charge. The OPTA system includes tools to assist municipal staff with evaluating tax policy options, tax rate setting and tax capping adjustments. Training and operational support on the OPTA system is readily available and also provided free of charge to municipalities: [opta.reamined.on.ca](http://opta.reamined.on.ca).

For tax billing, your council must also consider:

- whether taxes will be paid in one lump sum or in instalments;
- the dates on which payments will be due;
- penalties for late payments; and
- discounts for advance payments.

Many municipalities have adopted an instalment payment system. Instalments are convenient for taxpayers and provide the municipality with a steady cash flow, reducing the need for temporary borrowing. A further reduction in borrowing is possible if your municipality introduces an interim tax even before adopting its annual budget.

Your municipality must pass a bylaw to levy interim taxes. The interim amount levied on a property shall not exceed 50 per cent of the total taxes, both municipal and education, levied on the property for the previous year. See section 317 of the Act for more information on the interim tax.

Under section 345 of the Act, your municipality can pass bylaws to impose late-payment charges (penalties) on unpaid taxes. Taxes that are not paid by the due date may be subject to a penalty up to a maximum of 1.25 per cent of the amount of taxes on the first day of default and interest up to a maximum of 1.25 per cent per month if the taxes continue to be unpaid. Interest cannot be compounded.

### **Tax Collection**

Your municipality can explore a number of ways to collect unpaid taxes, such as through a court, or other processes in accordance with applicable legislation. These might include, for example, requiring tenants to pay their rent to the municipality instead of their landlord, or seizure of personal property.

Part XI of the Act and other provisions including the tax sales regulations (Ontario Regulation 181/03) also provide a way to collect outstanding property taxes – selling the property in question to collect the property taxes owed. Where the property tax on a property goes into arrears, in the third year after the amount becomes owing, your municipality can initiate the tax sale to collect the tax.

## **Government Contributions**

### **Payments in Lieu of Taxes**

Payments in Lieu of Taxes (PILs), generally, are payments made by provincial and federal governments and their agencies on certain property that is exempt from property taxation because it is owned and occupied by those governments and their agencies. Municipalities also make PILs on some of their public utilities, such as transit, sewer and water facilities.

PILs are generally calculated based on the assessment of land or based on a set amount. For example, the PIL on institutions such as hospitals, universities and correctional institutions is calculated based on \$75 per bed, student or inmate.

### **Grants and Subsidies**

Grants and subsidies may be contributions made by the provincial and federal governments to help a municipality, for example, meet the costs of delivering services to its residents. Provincial grants play an important role as a revenue source for municipalities, accounting for \$9.8 billion in annual revenues in 2012.



## Conditional and Unconditional Grants

Generally, conditional grants are understood as made for a specific program or service. By contrast, generally unconditional grants can be used to pay for expenses as council decides. Conditional grants account for about 94 per cent of total provincial grants and are subject to specific eligibility and spending criteria. The major conditional grants are for transportation, health, social services and the environment. Unconditional grants, which represent about six per cent of total provincial grants, consist mainly of funding provided through the Ontario Municipal Partnership Fund (OMPF), the province's main transfer payment to municipalities.

Through the OMPF, 388 municipalities are receiving \$550 million in unconditional funding for 2014.

In 2012, the government announced the review of the OMPF and the phase-down of the program to \$500 million by 2016. The OMPF phase-down was part of the province's agreement with municipalities in 2008 to upload social assistance benefit programs as well as court security and prisoner transportation costs off the property tax base.

The government's objectives for the redesigned 2014 OMPF are to:

- continue to support areas with limited property assessment;
- continue to recognize the challenges of northern and rural municipalities, while better targeting funding to those with more challenging fiscal circumstances; and
- assist municipalities as they transition to the redesigned program.

In addition to the support provided to municipalities through the OMPF, the province continues phased uploads of Ontario Works (OW) benefits and court security and prisoner transportation costs. This builds on the previous uploads of the Ontario Drug Benefit Program (ODB) and the Ontario Disability Support Program (ODSP).

As a result of these uploads, Ontario municipalities are benefiting from over \$1.5 billion in reduced costs in 2014 alone. The province's uploads have ensured that more property tax dollars are available for important municipal priorities, including investments in infrastructure and economic development.

The OMPF, combined with the municipal benefit resulting from the provincial uploads, will total over \$2 billion in 2014 – the equivalent of over 12 per cent of municipal property tax revenue in the province. It is important to note that even with the phase-down of the OMPF, overall support to municipalities will continue to increase, with the provincial uploads more than offsetting the reduction to the program.

You can find additional information regarding the OMPF at:  
<http://www.fin.gov.on.ca/en/budget/ompf/>.

## Other Revenue Sources

Ontario municipalities, as a whole, rely more heavily on municipal revenue sources than on federal and provincial government contributions, both in amount and in impact on the municipal budgeting and financing process. These municipal revenues are increasingly important for the operation of municipalities.

Many municipalities have diversified and expanded their revenue base in recent years to reduce their dependence on municipal taxation as the major revenue source. The use of appropriately set user fees can result in more sustainable funding for key infrastructure and may contribute towards positive environmental impacts.

## User Fees

Section 391 of the Act describes important aspects of the power of your municipality to impose fees and charges for services and for the use of municipal property. Your municipality may have a range of choices in deciding on the services for which it will charge a fee, the amount of the fee, the basis for calculating the fee, and who will pay the fee. Examples of fees charged by municipalities include fees for licenses, permits and services such as water, waste, sewage, transit, recreation and special police enforcement.

Ontario Regulation 584/06 provides that a municipally or local board does not have the power to impose fees on a number of things, including, among others, fees for:

- capital costs captured by existing bylaws or agreements under the Development Charges Act, 1997;
- processing of Planning Act planning applications;
- collection of school and upper-tier taxes; or
- some services, activities or costs related to telecommunications, electricity or gas businesses located on municipal highways.

## Local Improvement Charges

A local improvement is generally described as a municipal capital work (or project) that a municipality undertakes through the local improvements process; for example, widening a road. Municipalities may put in place local improvement charges to raise all or part of the costs of these capital works. In particular, a municipality may impose costs of local improvement works through special charges on properties abutting the work, and on properties that will immediately benefit from the project. In practice, municipalities often

spread the costs of local improvements over several years, to help reduce the annual amounts those paying the charges – which may include future owners along with original owners – must pay. In some cases, a municipality may be able to undertake a private work (such as a private road) as a local improvement.

Many of the rules are found in the Local Improvement Charges regulation (Ontario Regulation 586/06: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_060586\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_060586_e.htm)), which sets out details of the process, addressing matters such as an owner's share of the work, and the ways costs may be charged.

### **Licenses, Permits and Rents**

Revenues under this category include those from issuing licenses, permits and fees related to businesses, vendors, trailers, and animals. These revenues also include rents charged to use or occupy municipal properties, and concessions or franchises to use or operate municipal facilities.

The Building Code Act, 1992 includes fee transparency requirements. These include requirements for public meetings before permit fees are changed, and that there be an annual report, made available to the public, on the total fees collected, the direct and indirect costs of delivering services, and the amount of any reserve fund that has been set up by the municipality.

### **Fines**

This source of revenue includes fines imposed for not complying with municipal bylaws, fines related to the Building Code Act, 1992, and various other acts. The most common fines are for local parking or traffic violations and for violations of building regulations.

Local municipality treasurers may be able add an unpaid Provincial Offences Act fine to the property tax roll if all of the owners of the property are responsible for paying the fine.

### **Investment Income**

During the year, your municipality may have cash on hand (for example, from reserve funds) that is not immediately needed. This cash is often invested to earn income. Amounts from interim tax collections or grant payments may also not be immediately needed. It may be possible to seek a higher return on these monies by keeping the funds in a bank account with little or no interest. Your municipal treasurer can research and suggest investments and consider your council's policy and directions about appropriate levels of risk and reward.

### Development Charges

Development charges are fees imposed by municipalities on developers to pay for increased growth-related capital costs (both residential and non-residential) related to items such as water lines or recreational facilities. Development charges do not pay for operating costs or for the future repair, rehabilitation or replacement of infrastructure. In 2012, 202 municipalities in Ontario collected development charges. The Development Charges Act, 1997 (DCA) allows municipalities to impose development charges on people developing land through a municipal development charge bylaw. Before passing the bylaw, your municipality must prepare a detailed background study of all costs likely to be incurred as a result of new development and must hold at least one public meeting. The DCA sets out a framework your municipality must use in setting a development charge. Development charges are payable when a builder applies for a building permit. Your municipality can deny a building permit if the development charge is not paid.

### Shared Service Arrangements

Shared service arrangements between two or more municipalities may be an invaluable tool for municipalities to maintain, expand or add services, including those that might otherwise be beyond their reach. It is a proven way to reduce servicing costs. Municipalities could consider possibilities for sharing such as administrative staff, equipment, office space, police, emergency services, recreational facilities, roads maintenance, libraries, bylaw enforcement, waste management, accountability officers, or any range of services that are the responsibility of municipalities.

Municipalities may enter into agreements with each other (and some other local bodies) to jointly provide, for their joint benefit, many kinds of matters. These are sometimes called joint undertaking agreements. For more information, please refer to section 20 of the Municipal Act: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK29](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK29).

Your municipality's objectives, as outlined in the municipal strategic plan, can help identify whether shared services may benefit your municipality, and can help determine which services are appropriate for shared service agreements and which approaches are best suited to meet municipal needs. There are many innovative ways municipalities are working together to deliver additional or better services while cutting costs and generating revenue.

Examples of objectives that motivate municipalities to consider shared services:

- cost savings from economies of scale;
- service enhancements and expansions;
- access to specialists, skilled labour and/or better quality equipment;

- tapping into new revenue streams that require many users or inputs; and
- seamless service integration across a region.

More information and examples where municipalities have successfully undertaken shared services are available through the Shared Services in Ontario's Local Public Sector with Case Studies prepared by the Municipal Finance Officers' Association (MFOA): [www.mfoa.on.ca/Shared-Services-in-Ontario-Local-Public-Sector-Including-Case-Studies-and-Implications-for-Ontario-Municipalities](http://www.mfoa.on.ca/Shared-Services-in-Ontario-Local-Public-Sector-Including-Case-Studies-and-Implications-for-Ontario-Municipalities).

## FINANCING SOURCES

Sources of capital funding fall into three main groups: internal sources, external sources and debt or lease financing.

- Internal financing sources include transferring or using funds from or identified in the current-year operating budget or existing reserves and reserve funds to help finance capital works. The sale of existing assets which your municipality no longer needs (such as surplus real estate or buildings) can also generate funding for new capital projects.
- External sources of financing include other government grants (both federal and provincial), fundraising or donations, or payments to a municipality through public-private partnership arrangements.
- The third source – debt, lease or other kinds of financing – includes external borrowing and other financing involving long-term payment obligations for the municipality.

### Debt Management

Generally, a municipality may not commit more than 25 per cent of its total own-purpose revenues to service debt and other long-term obligations without first getting approval from the Ontario Municipal Board (see Ontario Regulation 403/02 – Debt and Financial Obligation Limits). Often, the limit for a municipality is referred to as the annual repayment limit (ARL). The ARL is calculated using the data that municipalities submit annually through the Financial Information Return (FIR) to MMAH on their long-term liabilities and debt charges.

Some of the indicators that municipalities use to figure out their ability to service debt are:

- debt per capita;
- debt charges per capita;
- debt charges as a percentage of revenue;

- debt charges as a percentage of the municipal levy;
- debt-to-assessment ratio; and
- debt charges to tax rate ratio.

The decision to use debt or pay-as-you-go financing is the municipality's decision. Either way may be beneficial to individual municipalities in certain circumstances. However, as a best practice, municipalities may wish to evaluate the long-term financial impact of a proposed approach before making these decisions.

## **EXPENDITURES VS EXPENSES**

### **Capital Expenditures or Capital Purchases**

A capital purchase or expenditure is generally one that results in the purchase, construction, development or improvement of a tangible capital asset. See [page 72, Table 1: Examples of Capital Expenditures and Operating Expense](#).

Capital purchases are not considered expenses. Amortization from the tangible capital assets is expensed in the statement of operations.

### **Operating Expenses**

An operating expense is generally seen as something that is consumable or has a short life. Operating expenses are often generated by ongoing programs, or expenses on goods that are consumable or have a short life, or on projects that constantly reoccur. For example, fire and police protection, park maintenance, and garbage collection costs are typically recorded as operating expenses.

The following table provides some examples of how capital budget expenditures may be different from operating budget expenses. The items listed are suggestions only, and may not necessarily be accurate or complete in your municipality's experience.

**Table 1: Examples of Capital Expenditures and Operating Expense**

Type of Facility	Capital Budget Expenditure	Operating Budget Expense
<b>Streets</b>	Physical change, such as street widening or design	Paving repair, seal-coating
<b>Traffic</b>	New or upgraded signal equipment	Equipment repair, lane marking
<b>Public Buildings</b>	Major remodelling and structural changes, new construction	Preventive maintenance repairs that do not significantly upgrade the structure or increase its previously estimated useful life (for example, minor roof repair)
<b>Water Treatment</b>	Rehabilitation of major components of a treatment facility to extend useful life or capacity, new construction	General repair or maintenance of equipment or facilities to continue operations

### Budgets vs Financial Statements

There is a disconnect between the budget used for raising the sums needed by a municipality and operating results reported in financial statements which follow Public Sector Accounting Board (PSAB)'s accounting standards. A budget disconnect may arise from – among other possibilities – a municipality including transfers to and from reserves in the annual budget. Under PSAB, transfers to and from reserves are considered neither revenues nor expenses. There may then be a difference between the budget used to raise the sums needed by a municipality, and a result reported exclusively using PSAB principles.

## MUNICIPAL ASSET MANAGEMENT PLANNING

Asset management is about seeking the best possible decisions regarding the building, operating, maintaining, renewing, replacing and disposing of infrastructure assets. It is an integrated, long-term or lifecycle approach to maximize benefits, manage risk and provide satisfactory levels of service to the public in a sustainable and environmentally responsible manner.

The overall asset management planning process takes a municipality's objectives, determines how these rely on infrastructure, and then develops a plan to provide the supporting infrastructure services at the lowest cost over the life of the infrastructure.

Having an asset management plan (AMP) in place will be useful in making capital financial planning decisions. Council may wish to consult the AMP when making these decisions to make sure that it is choosing to fund the highest priority capital projects.

### The Elements of an Asset Management Plan

The province developed Building Together: Guide for municipal asset management plans [http://www.moi.gov.on.ca/en/infrastructure/building\\_together\\_mis/part\\_two.asp](http://www.moi.gov.on.ca/en/infrastructure/building_together_mis/part_two.asp) which outlines the key elements for an asset management plan (AMP):

- **State of local infrastructure:** asset types, quantities, age, condition, financial accounting valuation and replacement cost valuation.
- **Desired levels of service:** defines levels of service through performance measures and discusses any external trends or issues that may affect expected levels of service or the municipality's ability to meet them (for example, new accessibility standards, climate change impacts).
- **Asset management strategy:** the asset management strategy is the set of planned actions that will seek to generate the desired levels of service in a sustainable way, while managing risk, at the lowest lifecycle cost.
- **Financing strategy:** having a financial plan is critical for putting an AMP into action. By having a strong financial plan, municipalities can also demonstrate that they have made a concerted effort to integrate the AMP with financial planning and municipal budgeting, and are making full use of all available infrastructure financing tools.

Additional resources are available through the province's Asset management Toolkit [http://www.moi.gov.on.ca/en/infrastructure/building\\_together\\_mis/tools.asp](http://www.moi.gov.on.ca/en/infrastructure/building_together_mis/tools.asp) and the Asset Management Plan Checklist <http://www.mfoa.on.ca/MFOA-Adds-New-Asset-Management-Tools> produced by the Municipal Finance Officers' Association (MFOA).

There are many benefits to asset management planning and the province has a tip sheet on communicating the benefits of asset management. [http://www.moi.gov.on.ca/en/infrastructure/building\\_together\\_mis/tools.asp](http://www.moi.gov.on.ca/en/infrastructure/building_together_mis/tools.asp). Council may wish to consult the AMP when making capital financing decisions to ensure that it is choosing to fund the highest priority capital projects.



## Infrastructure Funding

Ontario municipalities must develop detailed AMPs to accompany any request for provincial infrastructure funding. Municipalities are responsible for tailoring their asset management planning practices to their unique needs and ensuring that all the relevant expertise is brought to bear.

In August 2014, the province announced a new Ontario Community Infrastructure Fund [http://www.moi.gov.on.ca/en/infrastructure/building\\_together\\_mis/index.asp](http://www.moi.gov.on.ca/en/infrastructure/building_together_mis/index.asp) which will provide \$100 million per year in funding for critical road, bridge, water and wastewater projects.

## KEY TIPS

- Before voting on the adoption of a budget, as a municipal councillor you may wish to have a strong understanding of the significant costs the budget document is committing the municipality to, the revenues required to meet these obligations and, more importantly, how the budget will help the municipality achieve long-term financial sustainability.
- Public input is essential in the municipal budget process. Public input promotes trust in the municipality and ensures council is aware of residents' opinions.
- Ensure that the reporting requirement timelines are met to help ensure access to capital programs and receipt of provincial grants on time.
- Take advantage of the opportunity to use the breadth of FIR data to support evidence-based decision-making.
- Assessment appeals can take several years to resolve, particularly for more complex commercial and industrial property. An unexpected appeal loss could result in a significant tax increase if a municipality does not have the resources set aside to pay the amount. Municipalities may wish to consider, as part of their annual budget process, establishing and maintaining sufficient reserves to make up for expected or potential tax appeal-related awards. Many municipalities create 'tax rate stabilization reserves' for this purpose.
- Municipalities that provide different services or levels of service in different areas, such as urban or rural services, have used special area rates to help fund those services from within the areas or communities that benefit from them.
- If a property does not sell at the initial tax sale, a municipality can re-advertise the property a second time. The municipality can also take ownership of the land following a failed tax sale.

- Recent changes to the local improvement charge regulation state that municipalities can undertake private works as local improvements. Municipalities have put in place local improvement programs to help property owners with energy efficiency improvements and septic system rehabilitation.
- Councils may wish to consider using development charges to help cover a portion of the municipality's growth-related capital costs.
- Consider opportunities for sharing services or resources with your neighbouring municipalities, communities, local boards or other agencies to achieve economies of scale or tap into a new revenue stream or reduce expenditures.
- Review your municipality's asset management plan to help you understand the infrastructure priorities and needs within your community.
- Ensure your asset management plan is supported by a finance strategy and that the plan is integrated into the long-term financial plan.
- Integrate climate change adaptation best practices, such as storm water management, into your municipality's asset management planning.
- Become familiar with your municipal FIR.

## SECTION 5: LAND USE PLANNING

Community or land use planning can be defined as managing our land and resources. Through careful land use planning, municipalities can manage their growth and development while satisfying important social, economic and environmental concerns. More specifically, the land use planning process balances the interests of individual property owners with the wider needs and objectives of your community, and can have a significant effect on a community's quality of life.

You have a key role to play in land use planning. As an elected representative of the community, you are responsible for making decisions on existing and future land use matters and on issues related to local planning documents.

It is important to note that land use planning affects most other municipal activities and almost every aspect of life in Ontario. Council will need to consider these effects when making planning decisions, while recognizing that most planning decisions are long term in nature. Public consultation is a mandatory part of the planning process. You and your colleagues (especially if you are in a growing municipality) will devote a large part of your time to community planning issues. You may also find that much of your interaction with the public involves planning matters.

Good planning contributes significantly to the long-term, orderly growth and efficient use of services. It impacts all of us and helps us to build strong communities. On a day-to-day basis, it is sometimes difficult to see how individual planning decisions can have such impact. Making decisions on planning issues is challenging and, for these reasons, it is important to understand the planning system and process.

### THE PLANNING FRAMEWORK

The Planning Act provides the legislative framework for land use planning in Ontario. It is the basis for:

- local planning administration;
- the preparation of planning policies;
- development control;

- land division;
- the management of provincial interests; and
- the public's right to participate in the planning process.

Although the Planning Act is the primary legislation governing municipal land use planning in Ontario, you should also consider other related legislation such as the Greenbelt Act, 2005, the Places to Grow Act, 2005, the Environmental Protection Act, the Development Charges Act, 1997 and the Ontario Heritage Act when dealing with planning matters. In some cases, there may be provincial plans (such as the Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe, Growth Plan for Northern Ontario) and regulations associated with these statutes which also need to be considered. It is important to understand linkages between land use planning matters, infrastructure/public works and municipal finance given that municipalities are responsible for funding the long-term operation, maintenance and replacement of municipal infrastructure.

The Planning Act sets out processes and tools for planning and controlling development or redevelopment. These tools include:

- official plans;
- zoning bylaws (including minor variances);
- land division (for example, plans of subdivision or consents);
- site plan control; and
- community improvement plans.

The approval of land use planning documents and applications is the responsibility of the assigned, prescribed or delegated approval authority. This can be different depending on your local circumstances and the type of planning document or application. Your municipal staff or planning board officials will advise you on which body is responsible for approving different types of planning documents in your municipality or planning area.

### **The Provincial Policy Statement**

You should be aware that the Provincial Policy Statement (PPS) is issued under section 3 of the Planning Act and provides policy direction on matters related to land use planning that are of provincial interest (as set out in section 2 of the Planning Act).

The PPS provides the policy foundation for regulating the development and use of land in Ontario. The policies work together to help build healthy communities, use and manage resources efficiently, and protect public health and safety. The PPS includes direction on matters such as housing, economic development, natural heritage, agriculture, mineral aggregates and water.

Some examples of policy direction provided in the PPS 2014 include:

- promoting healthy, liveable and safe communities and the efficient use and management of land and infrastructure;
- encouraging coordination both within and between municipalities, as well as coordination with orders of government, agencies and boards and Aboriginal communities;
- ensuring appropriate opportunities for a mix/range of employment and housing, including affordable housing;
- recognizing that Ontario's communities are diverse and that small, rural and northern communities have unique needs;
- supporting healthy, integrated and viable rural areas, including rural areas in Northern Ontario;
- providing flexibility for agriculture-related uses and the range of economic uses allowed on farms (such as farm tourism and home-based businesses);
- protecting the environment and resources, such as wetlands, woodlands and habitat of endangered and threatened species, and recognizing the importance of the Great Lakes;
- directing development away from areas of natural or human-made hazards, such as areas prone to flooding and areas of high-to-extreme risk of wildfire; and
- adapting to climate change through land use and development patterns.

Municipalities implement the PPS through their official plans, zoning bylaws and decisions on development applications. The Planning Act provides that decisions made by councils exercising any authority that affects a planning matter "shall be consistent with" the PPS. This means that the PPS must be applied when making land use planning decisions and in developing planning documents, such as official plans and zoning bylaws. Every planning situation must be examined in light of pertinent PPS policies.

Local conditions should also be taken into account when applying PPS policies and when developing planning documents. The PPS makes it clear that planning authorities, including councils, are able to go beyond the minimum provincial standards in specific policies when developing official plan policies and when making planning decisions – unless doing so would conflict with another policy.

## Provincial Plans

The PPS provides the policy foundation for a number of provincial plans, including the Greenbelt Plan and the Growth Plan for the Greater Golden Horseshoe.

Unlike the PPS, which applies province-wide, a number of provincial plans apply to particular areas in the province. They provide more detailed policy direction to address specific needs or objectives in the geographies where they apply – such as environmental, growth management and/or economic issues.

Where a provincial plan is in effect, planning decisions must conform with, or not conflict with, the applicable provincial plan.

In addition to the PPS and provincial plans, other provincial initiatives intersect with land use planning, including:

- **Biodiversity: It's in Our Nature** – Ontario's plan to conserve biodiversity
- **Ontario's Great Lakes Strategy** – Ontario's vision, goals and priorities to help restore, protect and conserve the Great Lakes
- **CycleOn** – Ontario's cycling strategy
- **Climate Ready** – Ontario's climate change adaptation strategy and action plan

## The Ontario Municipal Board

People do not always agree on planning decisions made by local planning authorities. Because of this, the Ontario Municipal Board (OMB) exists as an independent tribunal to hear appeals and make decisions on a variety of municipal land use planning matters. When people are unable to resolve their differences and/or disputes on decisions made by local planning authorities, they can appeal those decisions to the OMB. The failure of a planning authority to make a decision on most planning applications within specified time periods can also be appealed to the OMB.

When a matter is appealed to the OMB, the board takes the place of the local planning authority and can make a decision within the authority provided for in the Planning Act.

The OMB's decisions on all matters appealed to it under the Planning Act are final, with the following exceptions:

- when the Minister of Municipal Affairs and Housing (MMAH) has declared a matter to adversely affect a provincial interest;
- when a request is made to the OMB for a review of its decision; and
- when the OMB's decision is appealed to Divisional Court.

Any person or public body, subject to meeting certain requirements, can appeal a planning decision with reasons to the OMB or, in the case of minor variance and consent application decisions, to a Local Appeal Body (LAB), if your municipality has established one.

Participation in the municipal planning process is an important criterion if the public wishes to make an appeal. You may therefore wish to encourage your constituents to participate in planning matters of interest to them. Some planning decisions regarding policies and applications relating to settlement area boundaries or new areas of settlement, employment areas and second residential dwelling units cannot be appealed. In such cases, you should always ask municipal planning or legal staff to advise you on whether a matter can be appealed. This is another reason why council must consider all relevant local and provincial interests when making decisions.

### **One Window Planning Service and Municipal Plan Review**

While municipalities are primarily responsible for implementing the PPS through official plans, zoning bylaws and local planning decisions, the authority to make land use planning decisions may rest at the provincial or the local level. As a councillor, it is important to understand the authority that your municipality has been delegated or assigned for different land use planning functions.

Where MMAH is responsible for land use planning decisions under the *Planning Act*, there is a process in place referred to as the “one window planning service”. This streamlined service communicates provincial planning interests and decisions to municipalities using one voice. For example, MMAH approves all upper-tier and single-tier official plans and official plan updates.

Where municipalities or planning boards are responsible for land use planning decisions, there is a process in place referred to as “municipal plan review”. For example, some upper-tier and some single-tier official plan amendments are exempt from MMAH’s approval.

These approval processes were created by the province to:

- act as one-stop portals between decision-makers and applicants for land use matters;
- co-ordinate provincial or municipal positions back to an applicant;
- maximize the effectiveness of early consultation;
- ensure consistent decision-making; and
- improve planning service delivery and use resources efficiently.

The two processes differ in several key ways:

One Window Planning Service	Municipal Plan Review
<ul style="list-style-type: none"> <li>• MMAH provides an integrated provincial decision on applications</li> <li>• Eight partner ministries collaborate to provide advice and technical support to MMAH (guided by an internal memorandum of understanding known as the “One Window Protocol”)</li> <li>• Province prepares guidance and support materials and may provide education and training</li> </ul>	<ul style="list-style-type: none"> <li>• Municipalities review and make decisions on local planning applications</li> <li>• Municipalities are responsible for obtaining technical expertise through external experts, peer review, background studies</li> <li>• Municipalities access provincial ministries for technical (not policy) support and data sharing</li> <li>•</li> </ul>

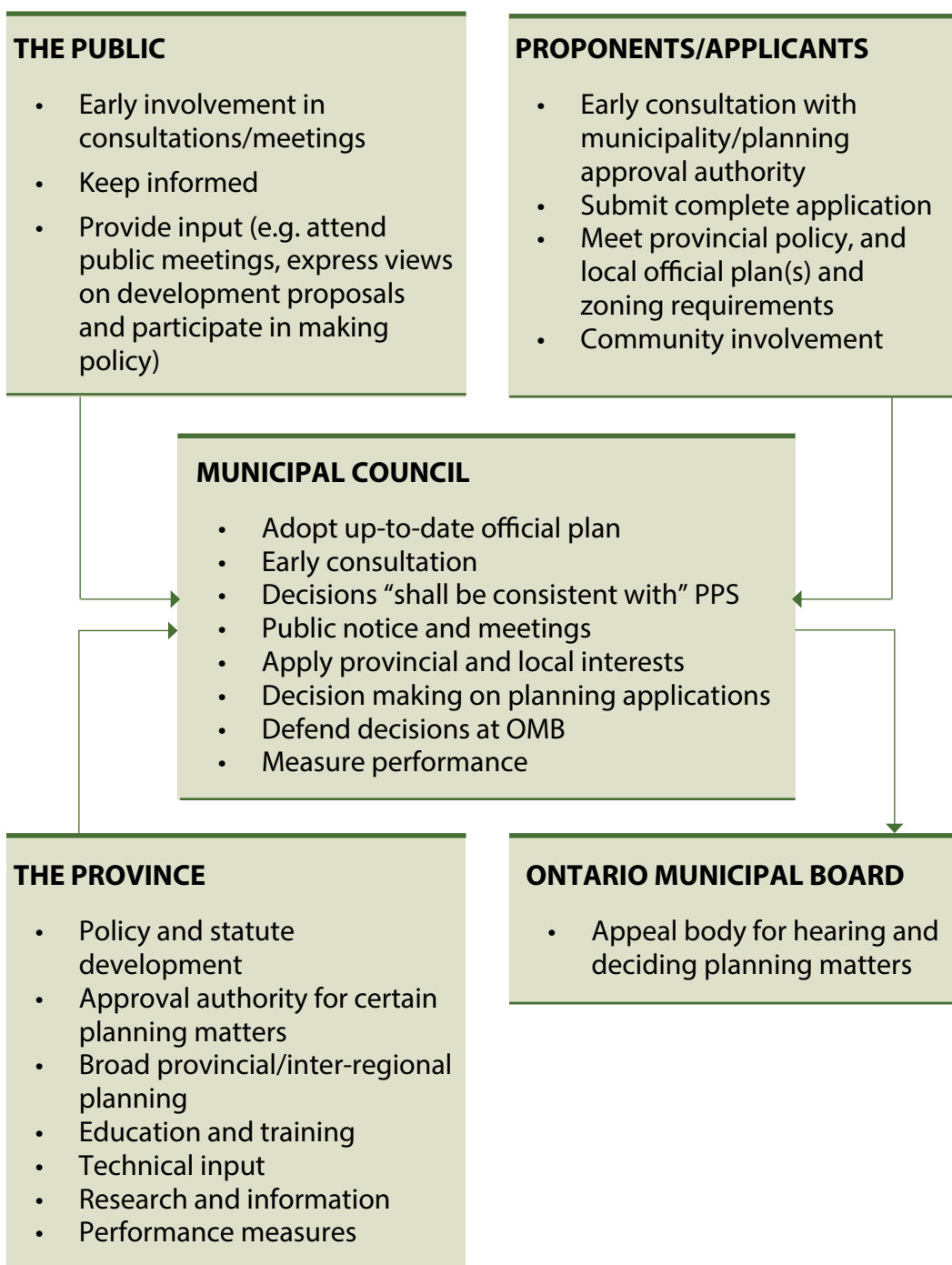
Regardless of the decision-maker, early consultation is encouraged to ensure an efficient process with the early identification of key planning issues. Decisions shall be consistent with the PPS and conform with or not conflict with provincial plans where applicable. All decision-makers must make responsible, accountable and timely planning decisions.

### **Municipal Empowerment**

Over the last several years the province has been providing municipalities with up to date official plans with additional authority to make their own local, streamlined, site specific decisions. This allows the province to focus its resources on reviewing and approving new official plans and five-year official plan updates.



## FIGURE 1: THE PLANNING FRAMEWORK



**Figure 1** provides you with an overview of the responsibilities and roles of the main parties involved in the planning system

## MUNICIPAL PLANNING TOOLS

This section describes the key planning tools provided by the Planning Act. These tools help municipalities plan and control development and achieve priorities like affordable housing, economic development and adapting to climate change. Reviewing your municipality's planning documents and discussing them with planning staff will give you a better understanding of their use and application.

### The Official Plan

An official plan describes your municipality's policies on how land should be used over the long term to meet the specific needs of your municipality. It is prepared with input from you and your municipality's citizens and businesses.

As a councillor, it is your role to make decisions on new official plans, plan updates and privately and municipally proposed amendments to the plan. You must also ensure that those decisions are consistent with the PPS, and conform with or do not conflict with any applicable provincial plan.

It is important for your official plan to be up-to-date. Your official plan addresses issues such as:

- where new housing, industry, offices and shops will go;
- what environmental features are to be protected;
- specific actions to be taken to achieve climate change objectives (view the Planning for Climate Change Info Sheet at <http://www.mah.gov.on.ca/Page6857.aspx>);
- what services, like roads, water mains, sewers, parks and schools, will be needed (and the financial implications of maintaining these assets through, for example, alignment with your asset management plan);
- when, and in what order, parts of your municipality will grow; and
- community improvement initiatives.

When preparing an official plan, municipalities must inform the public and give people an opportunity to voice their concerns and opinions. For example, council must hold at least one public meeting before the plan is adopted.

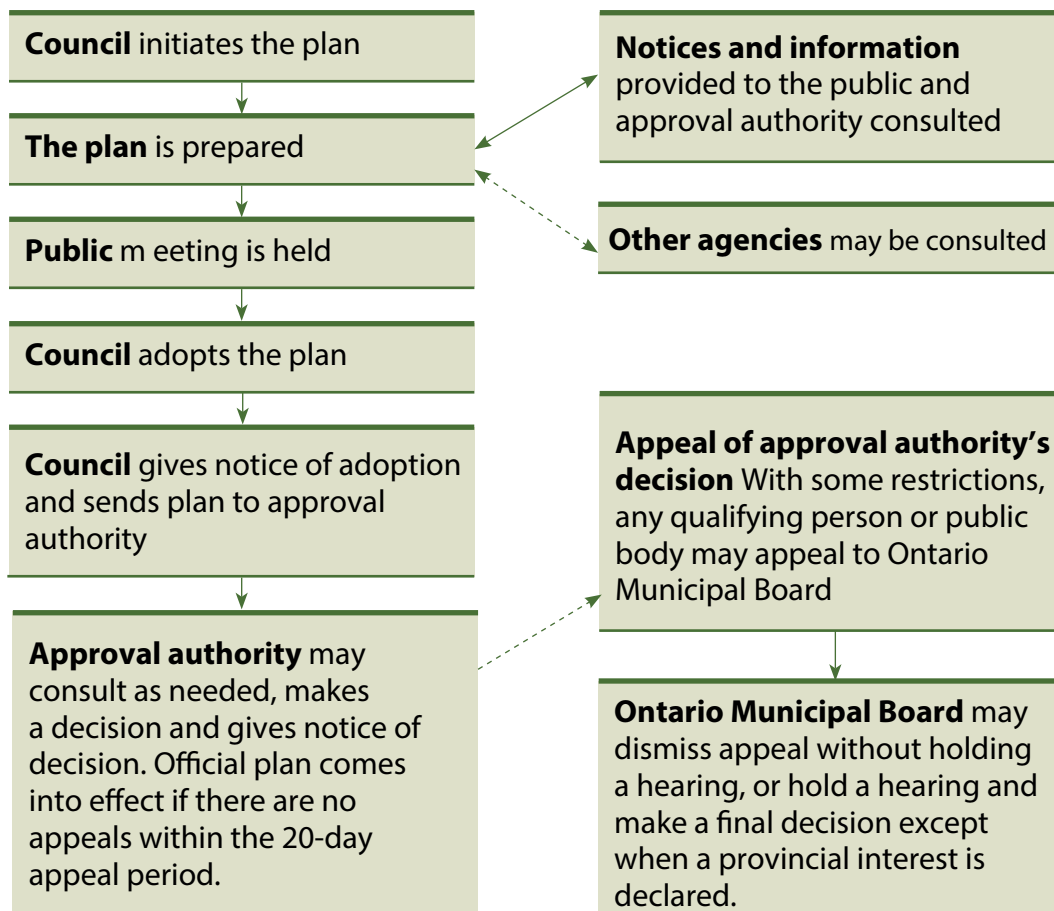
In the case of a statutory five-year official plan update, a public open house must be held prior to the public meeting. At the beginning of the review process a special meeting of council must be held to determine if changes to official plan policies are necessary.

When an official plan has been adopted, the Planning Act requires that notice of adoption be given to any person who asked for it. Once adopted by the municipality, a copy of the official plan is sent for final approval to the appropriate approval authority.

The approval authority is the Minister of MAH or the upper-tier municipality that has been assigned the authority to approve lower-tier municipal official plans. It is the responsibility of the approval authority to approve, refuse or modify the plan in whole or in part. Once approved, there is a 20-day appeal period provided for in the Planning Act. If no appeal is made, the plan comes into effect at the end of the 20-day period.

However, if all or part of the plan is appealed or if there is an appeal of the approval authority's failure to make a decision within the legislated timeframe, the OMB deals with the matters under appeal and makes the final decision. If the OMB approves the plan, it then comes into effect. Figure 2 provides an overview of the key steps in the official plan process.

## FIGURE 2: THE OFFICIAL PLAN PROCESS



**Figure 2** focuses on the basic process – some steps/details are not shown.

As a councillor, you should be aware that council may amend an official plan at any time. For example, the needs of a community change and evolve and changes may be necessary to allow desirable development that your current plan does not permit. These changes may be made through an official plan amendment, which is prepared and approved in the same manner as the plan itself. An amendment can be initiated by the municipality or by the public.

In addition, the official plan amendments of some municipalities are exempt from approval. In these cases, the approval authority has exempted a municipality from requiring its formal approval of the amendment. However, after a municipality gives notice of its adoption of an official plan amendment, any person, or public body that has made an oral submission at a public meeting or a written submission prior to adoption, or the approval authority, can appeal the adoption to the OMB within the 20-day appeal period allowed by the Planning Act, provided the amendment is of the type permitted to be appealed by the Act.

If there is no appeal, the amendment comes into effect automatically on the day after the 20-day appeal period expires. You may wish to ask your municipal staff if your municipality's official plan amendments are exempt from approval by the approval authority.

Your municipality's official plan provides the overall direction and guidance for planning in your community. Once approved, it means that:

- you and the rest of council and municipal staff must follow the plan;
- all public works (for example, new sewers) must conform with the plan; and
- all bylaws must conform with the plan.

If your municipality has an official plan, you are required to update the official plan at least every five years to ensure it conforms with or does not conflict with provincial plans, has regard to matters of provincial interest and is consistent with the PPS. In addition, if the official plan has policies dealing with the designation of areas of employment and/or policies dealing with the removal of land from areas of employment, these policies must be re-examined as part of the statutory five year update.

These measures ensure the plan is kept current and is sensitive to both provincial and municipal circumstances. An up to date official plan supports investment-ready communities with a local vision for how the community will develop.

## The Zoning Bylaw

The zoning bylaw controls the use of land. It implements the objectives and policies of the official plan by regulating and controlling specific land uses (and as such, must conform with the plan). A zoning bylaw achieves this by stating exactly:

- what land uses may be permitted;
- where buildings and other structures can be located;
- which types of buildings are permitted; and
- lot sizes and dimensions, parking requirements, building heights and setbacks from a street or lot boundary.

As an elected representative, it is your job to make decisions on new zoning bylaws, updates to the zoning bylaw, and municipally and privately initiated zoning amendments. You must ensure those decisions are consistent with the PPS, and conform with or do not conflict with any applicable provincial plan. As well, zoning decisions must conform with the official plan.

As with an official plan, your municipality must consult the public when preparing a zoning bylaw. A public meeting must be held before the bylaw is passed. Citizens may make their views known either verbally at the public meeting or through written submissions before the bylaw is passed. Only a person or public body that does this may appeal all or part of a council's decision, provided the matter may be appealed. Your municipal staff can advise you on which matters can and cannot be appealed.

Your municipality must also provide 20 days advance notice of the public meeting and provide information about the proposed bylaw. After all concerns have been fully considered, council has the authority to pass or refuse to pass the zoning bylaw.

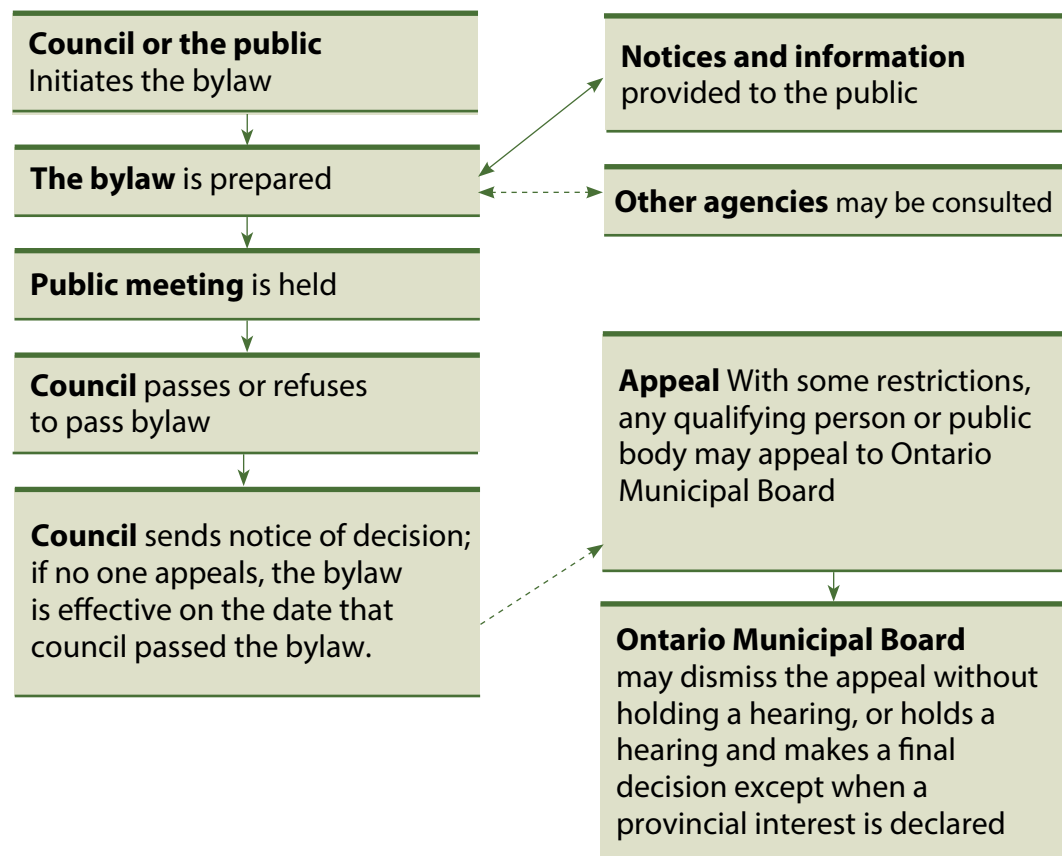
Zoning bylaw amendments (or re-zonings) may be necessary when the existing bylaw does not permit a proposed use or development of a property. A re-zoning follows the same basic process as passing the zoning bylaw itself, including appeal rights to the OMB. An amendment can be initiated by the municipality or by the public.

Any person or public body, provided certain requirements are met, may appeal your council's decision to the OMB within 20 days of the date the notice of the passage of the bylaw is given. This can be done by filing the appeal with your municipal clerk. When an appeal is lodged, the OMB holds a public hearing and may approve, repeal or amend the bylaw. If no appeal is filed within the appeal period, the bylaw is considered to have taken effect on the day it was passed by council.

A municipality must update its zoning bylaw to conform with its official plan within three years following the official plan's five-year update. A municipality is required to hold an open house to give the public an opportunity to review and ask questions about the proposed bylaw at least seven days before the public meeting.

Having an up-to-date zoning bylaw ensures that the locally developed policies in the official plan are capable of being fully realized in a timely manner. It is an important element of being an investment-ready community.

### FIGURE 3: ZONING BYLAW PROCESS



**Figure 3** provides you with a general overview of the zoning bylaw process

## Minor Variances

Generally, if a development proposal does not conform exactly to a zoning bylaw, but is desirable and maintains the general intent and purpose of the official plan and the zoning bylaw, an application may be made for a minor variance. For example, a property owner with an odd-shaped lot may propose a development that does not meet the zoning bylaw's minimum side yard setbacks. In this case, granting a minor variance eliminates the need for a formal re-zoning application. However, unlike a zoning amendment, it does not change the existing bylaw. A minor variance allows for an exception from a specific requirement of the zoning bylaw for a specific property, and allows the owner to obtain a building permit.

Minor variances are obtained by applying to the local committee of adjustment, which is appointed by council to resolve minor problems in meeting zoning bylaw standards applications. The application process includes a public hearing and a decision by the committee of adjustment.

Any person or a public body may appeal a decision of the local committee of adjustment to the OMB or a local appeal body (LAB) if the municipality has chosen to establish one. The OMB or LAB may dismiss an appeal or make any decision that the committee could have made on the original application.

## Plans of Subdivision

The provisions of the Planning Act apply when a property is proposed to be subdivided into separate parcels of land that can be sold separately. A subdivision plan must be prepared and submitted to the appropriate approval authority. Your municipal staff or planning board officials will advise you on which body approves subdivision plans in your municipality or planning area. Subdivision approval ensures that:

- the land is suitable for its proposed use;
- the proposal conforms to the official plan in your municipality, as well as to provincial legislation and policies; and
- your municipality is protected from developments that are inappropriate or may put an undue strain on municipal facilities, services or finances.

Decisions must be consistent with the PPS and conform with or not conflict with any applicable provincial plan.

The process begins when a property owner (or an authorized agent) submits a proposed draft plan of subdivision application to the approval authority for its review. The approval authority consults with municipal officials and other agencies that are considered to have an interest in the proposed subdivision (such as utility companies). In addition, a public meeting must be held with

advance notice. Each application is reviewed in light of existing policies, legislation and regulations.

Comments received from the consulted agencies (including the municipality in which the proposed subdivision lands are located) are also reviewed. The approval authority may either “draft approve” or refuse an application. A draft approval will generally be subject to one or more conditions that must be fulfilled before the subdivision plan is eligible for final approval and registration. These might include:

- a road widening;
- parkland dedication;
- signing of a subdivision agreement between the municipality and the developer; and
- re-zoning requirements.

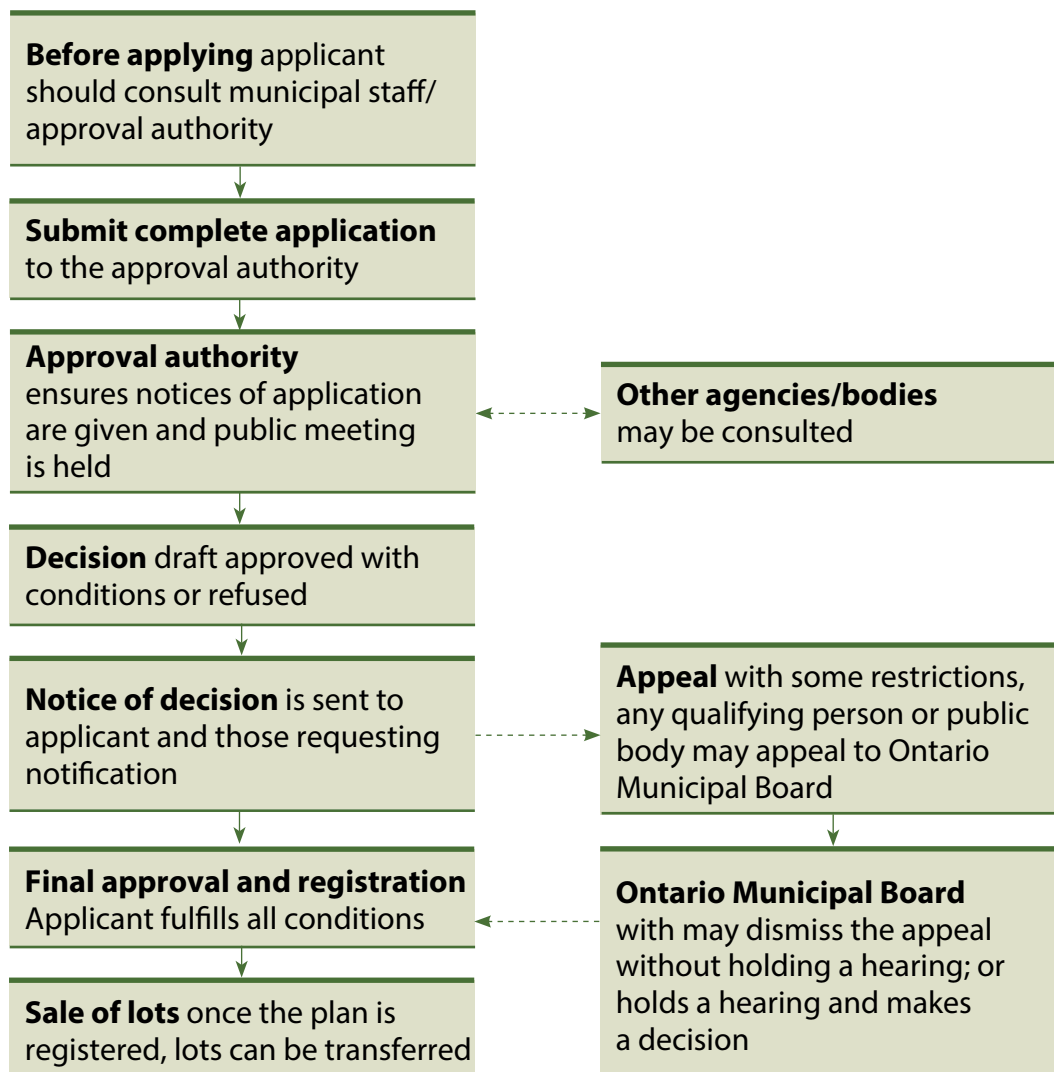
For example, the proponent may be required, as a condition to granting final approval, to enter into a subdivision agreement with your municipality and/or the approval authority to guarantee that services within the subdivision (such as roads and sidewalks) will be constructed to your municipality’s standards. When all draft approval conditions have been met, the subdivision plan receives final approval and can then be registered. The registered plan is a legal document that sets out the precise boundaries of the property, the dimensions of the blocks and building lots (including facilities such as parks and schools) and the widths of all streets, walkways, etc., within the property.

Any person or public body who makes their views known by making an oral submission at the public meeting and/or a written submission to the approval authority before draft approval is granted may appeal a decision or conditions within 20 days of a decision being given. However, only the applicant or a public body may appeal conditions of approval after the 20 days have expired. A person or public body who has made an oral submission at the public meeting or a written submission to the approval authority before it made its decision, or made a written request to be notified of any changed conditions, may appeal any changed condition for which notice is required to be given. Figure 4 provides an overview of the subdivision process.

Subdivision approval authorities also have authority to grant approval of condominium proposals pursuant to the Condominium Act, 1998. Although the condominium approval process has not been included in this section, it is similar to the subdivision process with certain modifications.



## FIGURE 4: THE SUBDIVISION PROCESS



**Figure 4** focuses on the basic process – some steps/details are not shown.

### The Consent Process

Your municipality can also use the consent process for subdividing property. For example, a property owner who wants to create only one or two new lots may apply for a consent (sometimes referred to as a “land severance”). Consent-granting authority may reside with a municipal council, a committee of adjustment, a land division committee, a planning board or the Minister of MAH. Municipal staff will advise you on which body is responsible for land severances in your municipality. Consent decisions must be consistent with the PPS and conform with or not conflict with any applicable provincial plan.

When evaluating a consent application, the approval body consults with the municipality in which the subject lands are located, and with agencies that are considered to have an interest in the proposed consent. Many approval bodies will also hold a public meeting with advance notice. Once the approval body has made a decision, it must notify the applicant and any person or public body that has requested notification within 15 days. A 20-day appeal period follows the giving of the notice. If the consent-granting authority does not make a decision within the legislated period of 90 days from the date the application was received, the applicant may appeal the lack of decision to the OMB.

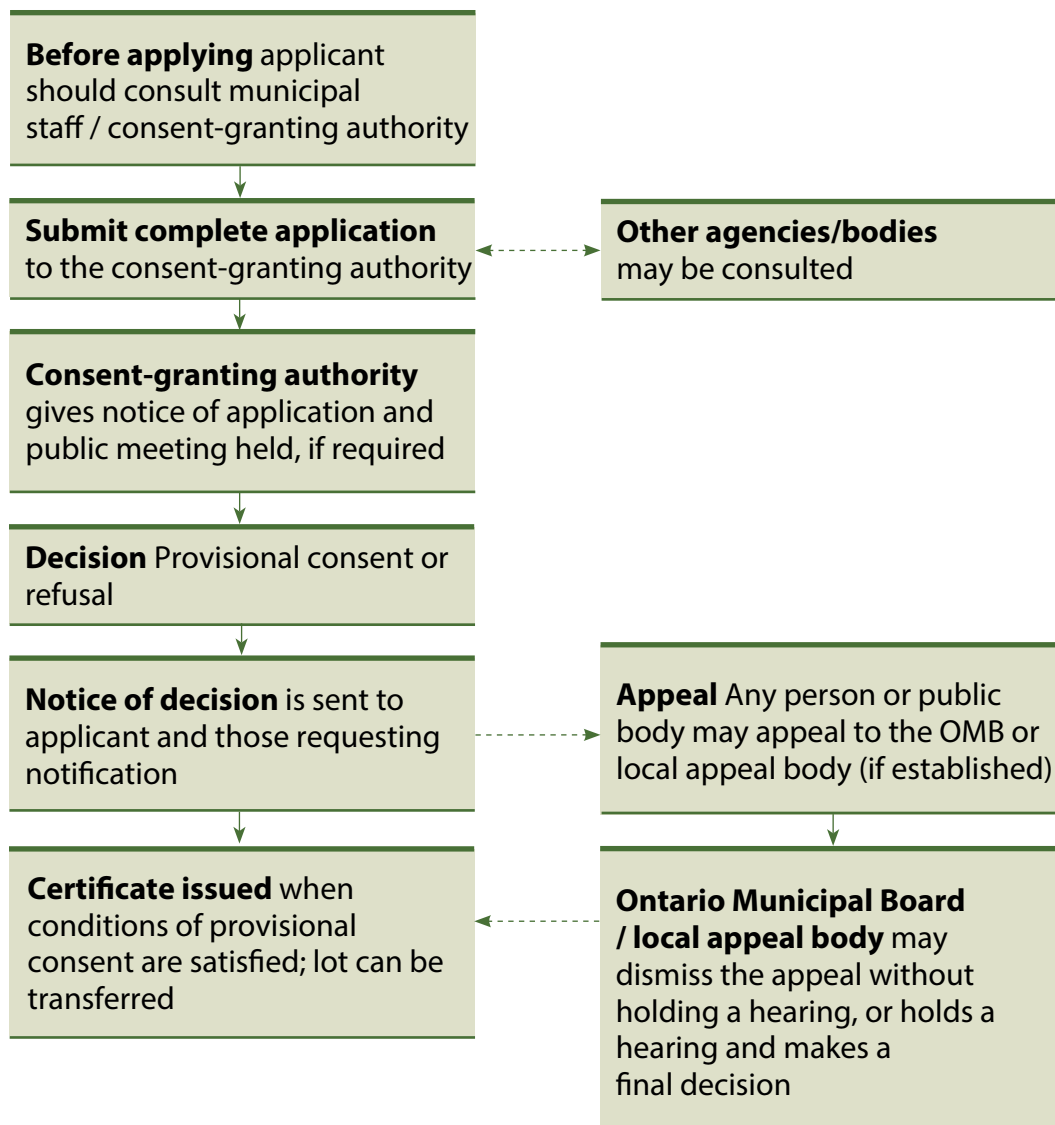
Similar to a subdivision draft approval, a consent approval (known as a provisional consent or consent-in-principle) may have certain conditions attached to it. There may be requirements for a road widening, parkland dedication or a re-zoning. If the consent conditions are satisfied within one year, the consent-granting authority issues a certificate of consent. If any of the conditions remain unsatisfied, the provisional approval expires automatically.

Appeals to the OMB – or to the LAB, if the municipality has chosen to establish one – must be filed with the consent-granting authority. When a decision is appealed, the OMB or LAB holds a hearing and can make any decision that the consent-granting authority could have made on the application. Figure 5 provides an overview of the consent process.

It is important to note that a consent (or plan of subdivision) is required in order to sell, mortgage, charge or enter into any agreement for a portion of land for 21 years or more. If the two parts are split already (by a road, for example) consent may not be needed. Other instances requiring consents include rights-of-way, easements and changes to existing property boundaries.

If a landowner is proposing to create a number of lots, a plan of subdivision rather than a consent is generally the best approach for the proper and orderly development of the property.

## FIGURE 5: THE CONSENT PROCESS



**Figure 5** focuses on the basic process – some steps/details are not shown.

### Site Plan Control

Site plan control gives municipalities detailed control of how a particular property is developed and allows municipalities to regulate the various features on the site. Council can designate areas of site plan control, in which case developers must submit plans and drawings for approval before undertaking development. Site plan control can regulate certain external building, site and boulevard design matters (for example, character, scale,

appearance, sustainable streetscape design) and can be used to mitigate and adapt to climate change (for example, green infrastructure, low-impact development features). Further, you may require a site plan agreement with a developer. The agreement could set out details such as parking areas, elevations and grades, landscaping, building plans and services. The agreements can be registered on title and must be complied with by the owner and all subsequent owners.

### **Community Improvement**

A community improvement plan (CIP) is another important municipal planning tool. The Planning Act allows municipalities to prepare community improvement policies in a CIP. The policies describe plans and programs that encourage redevelopment and/or rehabilitation improvements in a community. Municipalities are required to consult with MMAH as part of this process.

Improvements may include:

- industrial area remediation and redevelopment;
- streetscape and facade improvements;
- refurbishing of core business areas; and
- heritage conservation of homes or commercial buildings.

They may also include land assembly policies to make projects feasible or to create financial incentives that encourage increased housing choices, mixed densities and compact spatial forms in redevelopment and/or rehabilitation areas. Municipalities can make grants or loans within the CIP project areas to help pay for certain costs. Some municipalities have established Tax-Increment-Equivalent Financing programs as part of CIPs.

### **Development Permit System (DPS)**

The DPS is a relatively new (2006) optional tool that municipalities can use to streamline and facilitate development, promote economic development, promote brownfield redevelopment, enhance environmental protection and build strong communities.

Information can be found at: <http://www.mah.gov.on.ca/Page5911.aspx>.

The DPS provides a land use approval system that combines the zoning, site plan and minor variance processes into one application and approval. It provides additional local flexibility in the land use planning system by permitting variations in development standards and discretionary uses. These are subject to criteria and minimum and/or maximum standards that are set out in a development permit bylaw. A DPS also allows a municipality to establish conditions that can be imposed in making decisions on development

permit applications, including conditions requiring the provision of community facilities or services.

Enabling official plan policies and a development permit bylaw are required to implement the DPS. Public participation and the appeal process are focused at the front end of the system, which results in increased certainty.

### **Affordable Housing**

There are a number of tools under the Planning Act, the Municipal Act, 2001 and the Development Charges Act, 1997 that can be used to help create affordable housing. MMAH has released a handbook entitled *Municipal Tools for Affordable Housing* that can be accessed at <http://www.mah.gov.on.ca/AssetFactory.aspx?did=9270>.

For example, as part of the Ontario Long-Term Affordable Housing Strategy, the Planning Act was amended to facilitate the creation of second units to help improve housing affordability.

While numerous municipalities had already done so, the Planning Act now requires all municipalities to establish official plan policies and amend their zoning bylaws to allow second units in detached, semi-detached, row houses and ancillary structures. The second unit policies, once established, cannot be appealed to the OMB except at the time of an official plan five-year update.

Another land use planning tool that is designed to encourage affordable housing is the garden suite. Garden suites are temporary one-unit, detached residences containing housekeeping facilities that are ancillary to existing houses and that are designed to be portable. To provide potential homeowners with more certainty given the potential expense of installing a garden suite, the Planning Act was also amended to increase the number of years garden suites may be temporarily authorized from 10 to 20 years.

### **Economic Development through Land Use Planning**

Municipal councils can promote economic development through their land use planning decisions and by implementing planning tools. Having an up to date official plan and zoning bylaw can help your municipality be investment-ready in order to seek and take advantage of economic opportunities. A number of planning and financial tools are available in the Planning Act, the Municipal Act, 2001 and the Development Charges Act, 1997 and set out in a handbook entitled “Municipal Planning and Financial Tools for Economic Development” (<http://www.mah.gov.on.ca/Page9392.aspx>).

The following table summarises some of the Planning Act tools and their benefits:

Planning Act Tool	Description	Benefit
Community Improvement Plans (CIPs) (Section 28)	CIPs are used by municipalities as one means of planning and financing development activities that effectively use, reuse and restore lands, buildings and infrastructure.	Municipalities can make grants or loans within CIP project areas to help pay for certain costs.
Brownfields Community Improvement Planning	Provincial participation through the Brownfields Tax Incentive Program (BFTIP) matches municipal brownfield CIP property tax incentives with the provincial education tax portion.	Can provide financial incentive by making cleanup and development less expensive.
Development Permit System (Section 70.2)	Optional land use planning tool that replaces a standard multi-layered development approval process (zoning, site plan and minor variance), with a single process.	Results in a more streamlined, timely development process that: <ul style="list-style-type: none"> <li>• Reduces review timelines to 45 days</li> <li>• Removes third party appeals to the Ontario Municipal Board (OMB).</li> </ul>
Protection of Employment Lands (Sections 22 and 34)	No appeal of a council refusal to re-designate/ rezone lands from employment to other uses.	Allows municipalities to maintain a sufficient supply of serviced and ideally located (i.e. near transit, highways, ports, rail, airports) employment lands.

Planning Act Tool	Description	Benefit
Bonusing (Section 37)	Allows municipalities to give increased height and density as part of a zoning bylaw in exchange for the provision of “specified facilities, services and matters”.	Increased height and density maximize use of existing infrastructure.
Reduction or waiving of application fees (Section 69)	A tool that provides that council may reduce or waive planning application processing fees.	Could reduce the cost of planning approvals.
Conveyance of Parkland or Cash in lieu (Sections 42 and 51.1)	Allows a municipality to pass a bylaw applicable to all or part of a municipality, which can require the conveyance of land (up to 5%) for park purposes or cash in lieu as a condition of development or redevelopment (s. 42) or as a condition of approval of a plan of subdivision (s. 51.1).	Could act as a financial incentive if the bylaw excludes geographic areas where development/redevelopment is desired or the condition is not imposed on plans of subdivision within that area.
Reduction of Cash in Lieu of Parkland When Sustainability Criteria Met (Section 42)	Where sustainability criteria set out in an OP are met and no land is available for conveyance a municipality may reduce cash in lieu of parkland.	Can reduce cost of development and redevelopment while improving sustainability (could result in energy savings).
Reduction or Exemption from Parking Requirements (Section 40)	Provides that council may enter into an agreement to reduce or exempt an applicant from parking requirements in exchange for cash payments.	Could reduce cost of development by not having to supply as much parking, which can require additional land or parking facilities.

## A Balanced View

Before approving any planning application, you and the rest of council should look closely at all the related environmental, social and financial costs and benefits that may affect your municipality.

Environmental considerations include the effects of development on land, air and water. Social considerations include the local need for housing and job opportunities, as well as the possible demand for additional services such as schools, parks, day cares, nursing homes, group homes and other social support facilities.

From a financial point of view, when developing new official plans or assessing planning applications, council should weigh the benefits of additional tax revenues in light of:

- the capital costs of the hard and soft services that will be required;
- the ongoing costs of maintaining those services; and
- the effects of both the initial and long-term costs on the tax rate and the existing ratepayers.

Your municipality may also be undertaking other long-term strategic initiatives such as asset management planning, long term financial planning and planning for affordable housing through a housing and homelessness plan. The objectives and outcomes of these exercises and your land use planning documents should align.

Responsible community planning involves examining both the potential positive and negative impact of a proposed development on your community. The policies your municipality adopts should reflect a balance between supporting the economy, meeting social needs and respecting the environment.

## PARTICIPANTS IN LAND USE PLANNING

In addition to technical experts, commenting agencies, and the provincial government, there are two other potential key players in the land use planning process: the public and Aboriginal communities.

### The Role of the Public

The public plays an essential role in the planning process. Planning decisions made by council directly affect the people living in your community. The planning process is designed to give citizens the opportunity to share views on the planning policies of your community, examine planning proposals, register their concerns and ideas before decisions are made, and also to appeal decisions.



To ensure that the public and stakeholders are involved and understand the details of the planning process, the Planning Act provides for certain regulations to be issued. For example, regulations exist that set out procedures for public involvement in the process, procedures for giving notice of planning applications and other procedures. Your municipal or planning board staff can explain the regulations related to public involvement in your municipality.

### Engaging with Aboriginal Communities

It makes good sense to improve or build new relations with Aboriginal communities, who, as neighbours or part of our communities, may have an interest in land use planning. Aboriginal communities may have an interest in municipal land use planning given the linkages between land use planning and Aboriginal economies and cultures, use of traditional lands, and commitment to a healthy environment. Where there are Aboriginal interests, it is important for your municipality to engage with Aboriginal communities as part of the land use planning process. When municipalities engage affected and/or interested Aboriginal communities on planning decisions, it allows them to build relationships, share information, and find common interests related to land use planning and economic development.

## LAND USE PLANNING IN NORTHERN ONTARIO

If you are a councillor in Northern Ontario, you probably know that some aspects of land use planning are different in your region. Some of the factors that make land use planning in Northern Ontario different include:

- All municipalities are “single-tier”, in comparison to the “upper-tier” and “lower-tier” structure of much of southern Ontario.
- In contrast to its vast land base – which covers 90 per cent of the province – about six per cent of the province’s population lives in Northern Ontario. While over half of northerners live in the five biggest cities, many live in smaller, rural communities.
- Large portions of Northern Ontario have no municipal organization and are referred to as territory without municipal organization or “unincorporated” areas. While there are a number of local service delivery organizations in territory without municipal organization, including local roads boards, local services boards and planning boards, there are large areas where these services may not be available.

- Crown land makes up about 87 per cent of the province's land mass and more than 95 per cent of the land base in Northern Ontario. The Ministry of Natural Resources and Forestry is responsible for land use planning on Crown land, which is generally directed under the Public Lands Act or the Far North Act, 2010. In these cases, it is generally not subject to the Planning Act or the Provincial Policy Statement. Before Crown land is developed, however, the Ministry of Natural Resources and Forestry consults affected councils and takes any official plans and policies that are in effect into account.

Responsibility for land use planning in some northern municipalities and in areas without municipal organization is shared by planning boards and the Minister of MAH.

In non-Crown land areas without municipal organization where planning boards do not exist, the Minister of MAH continues to make decisions on land use matters such as land division. In some areas the Minister has put zoning orders in place to control land use and development.

Planning boards are unique to Northern Ontario and present an opportunity for municipalities to share planning services and coordinate development across municipal boundaries. In territorial districts, the Minister of MAH can define a planning area that may include two or more municipalities, one or more municipalities and unorganized territory, or only unorganized territory. The Minister can establish a planning board to handle land use planning activities in these areas.

- Members of planning boards representing municipalities are appointed by the local municipal councils, and members from areas without municipal organization are appointed by the Minister of MAH.
- A planning board is authorized to prepare an official plan for a planning area. A planning board also has the power to pass zoning bylaws for areas without municipal organization within a planning area.
- Most planning boards have been delegated a range of other land use planning responsibilities from the Minister of MAH, such as the power to grant consents, approve subdivision applications and administer Minister's zoning orders.

Land use planning decisions in our provincial policy-led system are made by informed councillors who consider both technical advice from professional planning staff and the views of the community. Your involvement in community planning will require you to make decisions on issues of public concern that often may be controversial. Despite this, your participation in a process that will determine the future of your community may well be one of the most enduring and gratifying contributions you can make as a councillor.

You can access additional information on the MMAH website at [ontario.ca/landuseplanning](http://ontario.ca/landuseplanning).

## KEY TIPS

- Land use planning decisions are a large part of your job as an elected official. You are responsible for understanding the level of authority that rests with your municipality and for making decisions on land use matters accordingly. The decisions you make need to balance technical advice, public consultation and environmental, social and financial considerations.
- The Provincial Policy Statement and any applicable provincial plans must be followed when making land use planning decisions and in developing planning documents, such as official plans and zoning bylaws.
- The public plays a key role in the planning process. Engaging with the public and considering its input is part of your responsibility as a councillor when making land use planning decisions.
- Most land use planning decisions can be appealed to the Ontario Municipal Board. You should be aware of which matters can be appealed.
- As an elected representative, it is your responsibility to consider new and evolving tools in the land use planning system that may be of benefit to your community, such as the Development Permit System or a Local Appeal Body.

## SECTION 6: BUILDING REGULATION

The Building Code Act, 1992 (BCA) lays out the legislative framework governing the construction, renovation, demolition and change of use of buildings in Ontario. The Building Code is a regulation made under the BCA; it sets out technical and administrative requirements.

The BCA defines the purposes of the Building Code to include the establishment of standards for public health and safety, fire protection, structural sufficiency, energy conservation, water conservation, environmental integrity, and barrier-free accessibility of buildings.

Under the BCA, municipalities are generally responsible for the enforcement of the Act and the Building Code within their jurisdiction. Municipal councils must appoint a chief building official and as many building inspectors as are necessary for the proper enforcement of the Act and the Building Code. The chief building official and inspectors must meet qualification requirements established by the Act and the Building Code, which include successful completion of Building Code legal and technical examinations in their area of practice.

Chief building officials and inspectors are to perform their duties in accordance with a code of conduct established by the municipality in compliance with the BCA.

The role of a chief building official includes establishing operational policies for the enforcement of the BCA and Building Code, and coordinating and overseeing their enforcement.

The chief building official is also responsible for issuing permits for the construction, renovation, change of use or demolition of buildings that conform to the requirements of the BCA and the Building Code. These requirements include compliance with the list of applicable law in the Building Code, making the Building Code a powerful enforcement tool.

Chief building officials and inspectors are also responsible for exercising powers and performing other duties assigned to them under the BCA and the Building Code, including reviewing plans, inspecting construction, and issuing orders.

It is important to note that this enforcement role is assigned specifically to the chief building official and inspectors by the BCA, which is a provincial law. Council does not have a role under the BCA or the Building Code in decision-making on building permit applications or the issuance of orders. Chief building officials and inspectors are independent of municipal council when exercising these powers and duties. However, it is appropriate for municipal councillors or staff to direct concerns regarding the safety of buildings to building officials for the building officials to take action as they see fit.

The BCA requires that municipalities and other principal authority establish and enforce a code of conduct for chief building officials and building inspectors. The purposes of a code of conduct are set out in the BCA and include:

- a. promoting appropriate standards of behaviour and enforcement actions;
- b. preventing practices which may constitute an abuse of power; and
- c. promoting appropriate standards of honesty and integrity by a chief building official or building inspector in the exercise of a power or the performance of a duty under the BCA or Building Code.

A code of conduct must provide for its enforcement, include policies or guidelines to be used when responding to allegations that the code of conduct has been breached, and include disciplinary actions that may be taken if the code of conduct is breached. A code of conduct must also be brought to the attention of the public.

The 2012 Building Code is written in an objective-based format. Under this approach, the objectives underlying the prescriptive requirements of the Code are identified. This allows for a better understanding of Code requirements, and creates a framework for the evaluation of innovative building materials, systems and designs. Specifically, the objective-based format allows designers and builders to submit as part of their permit applications “alternative solutions” to the technical requirements of the Building Code. Since 2006, as part of their role in reviewing building permit applications, building officials have also been responsible for reviewing and approving “alternative solutions.” An alternative solution is a proposal regarding building materials, systems and designs that differs from, yet still provides the same level of performance as, the technical requirements found in the Building Code.

The Building Code includes service level standards that municipalities must meet, including timeframes for making a determination on a building permit application such as issuing a permit or refusing to issue a permit, giving full reasons, and timeframes for construction inspections following the receipt of notice from the building permit holder. For example, the Building Code sets a 10-day timeframe for the approval or refusal of a building permit application for a house.

Chief building officials and inspectors also have the power to issue orders when buildings are found to be unsafe and in emergency situations. Chief building officials may also take actions to remedy the unsafe conditions and immediate dangers.

The BCA and the Building Code also address fees charged by municipalities for building permit applications and related activity. These services should generally be self-supporting. Permit application fees should cover the cost to operate the building department. In this way, delivery of building department services should generally not affect the municipal budget. However, the fees are not permitted to exceed the anticipated reasonable costs of the municipality to enforce the Act.

Building permit fees can also include a component designated for a reserve fund. The reserve fund is intended to ensure that, even if building activity in a municipality undergoes a downturn, building department services can continue to be provided for a time without impact on the municipality's finances. Money in the reserve fund can only be used for costs of delivering services related to the administration and enforcement of the BCA. As a consequence, the reserve fund is not accessible for council to use to fund other municipal activities. Building permit fees and reserve fund policies are often subject to regular review by council, and can be modified to reflect local conditions within the general intent that the services remain self-supporting.

Municipalities are also permitted under the BCA to enter into agreements to share the costs of delivery of building services, and successful examples exist. Alternatively, private sector firms known as a "Registered Code Agency" can also be contracted to deliver many building services on behalf of a municipality or municipalities.

The Building Code is subject to regular review and update. The current edition – called the 2012 Building Code – came into effect in January 2014. However, interim Building Code amendments are occasionally made to reflect government priorities, innovations in construction and design, changes in other jurisdictions, emerging issues, and coroner's jury recommendations. For example, amendments to make new buildings more accessible will come into effect in January 2015.

Additional information on the BCA and the Building Code is available by telephone from MMAH's Building and Development Branch at **(416) 585-6666**, by fax at **(416) 585-7455** or on the Building Code website at: [ontario.ca/buildingcode](http://ontario.ca/buildingcode).

## PROPERTY STANDARDS BYLAWS

The BCA gives municipalities the power to adopt a municipal property standards bylaw. The bylaw may establish standards for the maintenance and occupancy of properties within all or part of the municipality, and require properties that do not confirm to the standards to be brought into conformity.

Prior to making a property standards bylaw, council must include policies relating to property conditions in the municipal official plan or adopt, by bylaw approved by the Minister of MAH, a policy statement containing provisions relating to property conditions. A municipal Property Standards Committee must be established to hear appeals from property owners and occupants who have received orders to comply with the bylaw.

The BCA also provides that municipal property standards officers may inspect properties and issue orders to enforce property standards.

The property standards bylaw does not necessarily have to be administered by the chief building official, despite the fact that the BCA provides municipalities with the ability to have a property standards bylaw. Council has the discretion to decide how best to deliver this function. Some assign this role to the buildings department; others establish an independent property standards department.

## **KEY TIPS**

- Consider sharing building department services with your neighbours.
- Familiarize yourself with the code of conduct approved by council that outlines appropriate standards of behaviour and practices governing the activities of the chief building officials and inspectors.
- Councillors are reminded that the work of the building department within their municipality is to help ensure the health and safety of the public. As such, they operate independently and without interference from council or councillors when exercising the powers and duties assigned to them under the Building Code Act, 1992.



# SECTION 7: EMERGENCY MANAGEMENT AND DISASTER FINANCIAL ASSISTANCE

## INTRODUCTION

Emergencies capture the public's attention like few other events. As municipal councillors one of your municipality's most important responsibilities is the safety and security of your community. Whether it is spring flooding in Northern Ontario or a power failure in southern Ontario, emergencies and disasters call all of us to action.

Ontario is experiencing more and more natural disasters due to the impacts of climate change and extreme weather events. As a result, the costs and economic impacts of disasters are increasing for people and governments at all levels. Evidence suggests that targeted investments to mitigate disaster risk and improve climate resilience can be cheaper and more effective than disaster relief efforts after an incident.

Helping communities recover following disasters beyond their capacity to manage remains a priority for the province. At the same time, it is important that municipalities maintain sufficient reserves and appropriate insurance coverage to manage the costs of disasters within their capacity. It is also important to consider long-term planning tools, such as asset management plans, as infrastructure ages and is renewed to support community resilience.

## RISK MANAGEMENT APPROACH

Ontario's approach to emergency management includes activities under five pillars: prevention, mitigation, preparedness, response and recovery.

**Prevention** refers to the actions taken to prevent the emergency itself. One example of prevention is land use planning that keeps development away from high-risk areas like flood plains.

**Mitigation** refers to actions taken to reduce or eliminate the effects of an emergency. An example of mitigation is rebuilding a road with larger culverts to reduce the impact of extreme rainfall.

**Preparedness** refers to measures taken in advance of an emergency to ensure an effective response framework is in place. Having a municipal emergency response plan is a key element of preparedness.

**Response** refers to measures taken to respond to an emergency, such as actions by first responders or provision of shelter to residents.

**Recovery** refers to actions taken to recover after an emergency or disaster. Recovery includes rebuilding damaged infrastructure.

While we cannot control the weather, municipalities can influence many risk factors. One element under a municipality's direct control is maintenance of sufficient reserves to ensure it is financially prepared for unexpected events. Another is a municipality's emergency management program. Robust emergency management programs reduce your municipality's risks and help to ensure that you are prepared to respond when an emergency happens.

## LEGISLATION AND REGULATION

In Ontario, the [Emergency Management and Civil Protection Act](#), along with other legislation, establishes the province's legal basis and framework for managing emergencies. Key provisions in the Act include:

- the requirement that municipalities and provincial ministries develop and implement an emergency management program;
- the authority for the head of council of a municipality to declare an emergency in the municipality, and to make such orders as he or she considers necessary and are not contrary to law to implement the emergency response plan of the municipality; and
- the authority for the Lieutenant Governor in Council or the Premier of Ontario to declare that an emergency exists in any part of Ontario (subject to the criteria in the Act).

The Minister of Community Safety and Correctional Services has set the program standards for municipal emergency management programs in [Ontario Regulation 380/04](#). Under the regulation, every municipality must maintain an:

- emergency management program committee to advise on the development and implementation of the emergency management program;
- emergency control group to coordinate a municipality's response in an emergency;
- emergency operations centre; and
- emergency response plan.

The regulation also requires each municipality to designate staff persons or a member of council to fulfil the roles of emergency management program coordinator and emergency information officer. Having designated and trained staff is critical to responding quickly to emergencies.

## ROLES AND RESPONSIBILITIES

All Ontarians have a role to play in emergency management.

Individuals are responsible for the safety, preparedness, and well-being of themselves and their families. At a minimum, everyone should be aware of the hazards that might affect him or her and be sufficiently prepared to deal with them.

Each municipality is required to develop and implement an emergency management program tailored to local needs and priority risks. In many cases, the response capability of the municipality (e.g. fire, police, emergency medical services, public works, etc.) is sufficient to deal with routine incidents.

The province maintains emergency management programs for specific hazards and risks, and delivers emergency services that complement programs implemented by communities.

The [Office of the Fire Marshal and Emergency Management \(OFMEM\)](#) of the Ministry of Community Safety and Correctional Services, as the overall provincial emergency management coordinator, is responsible for the promotion, development, implementation and maintenance of effective emergency management programs throughout Ontario.

OFMEM is the primary emergency response contact for municipalities requesting provincial support. Field Officers are stationed throughout Ontario and are ready to provide advice and assistance to communities as required. OFMEM also maintains the Provincial Emergency Operations Centre (PEOC) on a 24/7 basis. Any municipality that requires help to respond to an emergency can call the PEOC at any time to request provincial assistance.

The federal government may provide assistance to the provincial government when requested.

## DISASTER FINANCIAL ASSISTANCE

The [Ministry of Municipal Affairs and Housing \(MMAH\)](#) administers the [Ontario Disaster Relief Assistance Program \(ODRAP\)](#), which is intended to provide assistance when extensive damage resulting from a sudden and unexpected natural disaster exceeds a municipality's capacity to manage. ODRAP contains two components:

- Private component: Financial assistance for individuals, homeowners, farmers, small business enterprises and non-profit organizations. Funds are raised by the community and are matched up to 2:1 by the province.
- Public component: Financial assistance for municipal disaster response and recovery costs. Grants are paid to municipalities from provincial funds.

The Minister of Municipal Affairs and Housing alone has the authority to declare a disaster area for the purposes of ODRAP. (A declaration of a disaster area for the purposes of ODRAP is separate from an emergency declaration under the Emergency Management and Civil Protection Act.) Municipalities submit a council resolution requesting assistance to the Minister within 14 working days of the disaster to be considered for assistance. A municipality may request the declaration of a disaster area even if it does not declare an emergency under the Emergency Management and Civil Protection Act.

It is important that a municipality submitting a request for ODRAP provides information to the ministry about the impacts of the disaster and associated cost estimates. Consider mechanisms for tracking costs and gathering information about damage as part of your municipality's emergency planning.

## KEY TIPS

- We all have a role to play in emergency management.
- Your municipality is responsible for the annual compliance of its emergency management program with the Emergency Management and Civil Protection Act.
- Consider using a risk management approach for your municipality's emergency management program and consider climate change adaptation and disaster mitigation measures.
- Maintain reserves to ensure your municipality is financially prepared to manage unexpected events.
- The [Ontario Disaster Relief Assistance Program \(ODRAP\)](#) is available if a disaster occurs that is beyond the financial capacity of your municipality to manage on its own.

# SECTION 8: AFFORDABLE AND SOCIAL HOUSING

## HOUSING AND HOMELESSNESS

### Ontario's Long-Term Affordable Housing Strategy

As a councillor, you likely know that safe and affordable housing is fundamental for Ontarians striving to build a strong future for their families and their communities. Through Ontario's Long-Term Affordable Housing Strategy (LTAHS), the Canada-Ontario Investment in Affordable Housing Program (IAH), the Community Homelessness Prevention Initiative (CHPI) and other programs and services, Ontario is working to improve access to adequate, suitable and affordable housing. This will help the people of Ontario to have a solid foundation on which to get employment, raise families and build strong communities.

Additional information on Ontario housing and homelessness programs can be found at:

**Long-Term Affordable Housing Strategy:** <http://www.mah.gov.on.ca/Page9181.aspx>

**Canada-Ontario Investment in Affordable Housing Program:** <http://www.mah.gov.on.ca/AssetFactory.aspx?did=9288>

**Community Homelessness Prevention Initiative:** <http://www.mah.gov.on.ca/AssetFactory.aspx?did=10065>

### Housing and Homelessness Plans

It is important for councillors to understand that Service Managers including District Social Services Administration Boards (DSSABs) have a central role in coordinating housing and homelessness services in their communities. The Housing Services Act, 2011 requires Service Managers to create comprehensive, multi-year plans for local housing and homelessness services and to report on progress achieved towards meeting the objectives and targets set out in their plans. These plans were required to be in place by January 1, 2014. We would encourage councillors to review their housing and homelessness plan for their Service Manager area.

In LTAHS, there are currently a range of planning and financial tools available to municipalities that encourage affordable housing, including:

- property tax exemptions for municipal housing project facilities;
- loans and grants to municipal housing project facilities; and
- establishing targets through official plans.

More details on municipal tools for affordable housing are available on the Ministry of Municipal Affairs and Housing (MMAH) website: <http://www.mah.gov.on.ca/AssetFactory.aspx?did=9270>.

## Social Housing

It is important for councillors to know how and when municipalities assumed responsibility for the administration of social housing. The Social Housing Agreement (SHA), signed by Canada and Ontario in 1999 transferred responsibility for social housing from the federal government to the province, with the exception of on-reserve aboriginal housing and federal cooperatives.

The Ontario government transferred responsibility for administering and funding most social housing projects to Service Managers, including District Social Services Administration Boards (DSSABs) under the now repealed Social Housing Reform Act, 2000. That Act has been replaced with the Housing Services Act, 2011.

Under the Housing Services Act, 2011 Service Managers are responsible for:

- administering and funding social housing and maintaining service level standards;
- preparing and implementing local housing and homelessness plans; and
- considering certain consents requested by social housing providers under the housing legislation.

The Housing Services Act, 2011 provides Service Managers with greater autonomy and flexibility with respect to the administration of social housing than the Social Housing Reform Act, 2000 did.

For more details on the Social Housing Business, see MMAH's website: <http://www.mah.gov.on.ca/Page148.aspx>.

Since 2000, Ontario's 47 Service Managers have been (through a variety of arrangements) responsible for delivering and administering:

- both social and affordable housing;
- other social services programs such as Ontario Works;
- child care; and
- homelessness initiatives.

## Municipal Funding of Social Housing Using Property Tax Revenue

With the passage of the now repealed Social Housing Reform Act, 2000, Service Managers were transferred full responsibility for administering and funding the social housing governed by that Act.

For details on the Local Services Realignment initiative, see MMAH's website: <http://www.mah.gov.on.ca/AssetFactory.aspx?did=4997>.

The Provincial Municipal Fiscal and Service Delivery Review (PMFSDR) resulted in a landmark agreement in 2008 between the Province and Ontario's 444 municipalities. The agreement provides communities with the capacity to plan and budget for their future and focus municipal property tax dollars on local priorities.

The PMFSDR did not directly affect use of municipal property taxes for social housing. Social housing costs remain the responsibility of municipalities to finance using their range of available tools, including property taxes.

**Provincial uploads** have provided municipalities with more flexibility to use property tax dollars to invest in local priorities, such as infrastructure, job creation and economic development.

## KEY TIPS

- Become informed on the full range of housing and homelessness needs and issues in your community and service manager area.
- Understand the various municipal, provincial, and federal housing and homelessness policies and programs.
- Understand and promote municipal and financial tools for the creation of new affordable housing.
- Promote and understand the benefits of delivering social services in an integrated fashion.
- Participate on local housing and homelessness committees.

# APPENDIX A

## QUESTIONS TO CONSIDER ON FINANCIAL INFORMATION RETURN (FIR)

The FIR is a useful source of information to help your council make decisions. For example, you can use the data to compare your municipality to other, similar municipalities who have made decisions about the same issues.

Council may request FIR data reports from municipal staff. Below is a list of sample questions that FIR data could help to answer. This is not intended to be an exhaustive list. Staff may develop other questions to get the information you seek.

1. 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?
2. What pressure is on your tax base from outstanding assessment appeals? How does your council monitor potential pressures to your tax base, such as outstanding assessment appeals? What policies or practices does council have for addressing those pressures through the budgeting process? Does the municipality maintain tax stabilization reserves?
3. Another potential pressure is the level of tax arrears in your municipality. Is it increasing or decreasing? What factors in your community have affected the level of tax arrears? How does your municipality compare to others? Why is that?
4. What funding sources does your municipality allocate to capital projects? How does your municipality use its asset management plan to support these capital funding arrangements?
5. How much of your municipality's financial commitment to capital projects is based on expected funding from other levels of government?



6. Is your municipality's level of long-term debt increasing? How does its long-term debt level compare to other municipalities? Does your municipality reconcile asset management objectives with its level of long-term debt?
7. How much does the municipality have in reserves? Does your municipality have adequate reserves? What factors does your council consider when looking at the level of reserves?
8. How much does the municipality acquire from user fees? What municipal services does your municipality charge a user fee for? Does the current level of user fees assist significantly with financing the particular service?
9. What steps has your municipality taken to maintain a good balance between taxes and level of service? For example, use of alternative revenue sources, shared services and finding service efficiencies.

## RESOURCES

There are a number of books and articles available through:

Municipal World Inc.

42860 Sparta Line

Union, Ontario, N0L 2L0

Tel: 519-633-0031

<http://www.municipalworld.com/store/index.php?route=product/category&path=59>

## BOOKS

- 10 Trends for Smarter Communities (The world is changing for our communities): Gord Hume (2013)
- Brands, Buzz & Going Viral (A sourcebook of modern marketing strategies, tips, and tactics to promote your municipality): Ian Chadwick (2014)
- Conduct Handbook for Municipal Employees and Officials: Rick O'Connor, Peter-John Sidebottom & David G. White (2nd ed). Toronto: LexisNexis Canada Inc. (2003)
- Cultural Planning for Creative Communities (A practical how to book on municipal cultural planning and the creative city concepts for municipalities of all sizes): Gord Hume (2009)
- Digital Connections: Social Media for Municipalities & Municipal Politicians: Ian Chadwick (2012)

- Executive Policy Governance: A Leadership Model for Local Government – George B. Cuff (2014)
- Guide to Good Municipal Governance: C. Richard Tindal & Susan Nobes Tindal (2006)
- Making a Difference, Cuff’s Guide for Municipal Leaders – Volume 2: George B. Cuff (2006)
- Measuring Up: An Evaluation Toolkit for Local Government: Charles K. Bens (2002)
- Municipal Ethics Regimes: Greg Levine (2009)
- Off the Cuff (A collection of writings by George B. Cuff-Volume Two): George B. Cuff (2009)
- Off the Cuff (A collection of writings by George B. Cuff-Volume Three): George B. Cuff (2011)
- Ontario’s Municipal Conflict of Interest Act – A Handbook: M. Rick O’Connor & George H. Rust-D’Eye (2007)
- Places and Spaces (How municipalities design their public realm strongly influences their economy and culture): Gord Hume (2014)
- Politically Speaking (Media Relations & Communications Strategies for Municipal Politicians): Ian Chadwick (2012)
- Procurement Guide (A practical guide for Canada’s elected municipal leaders): Denis Chamberland (2007)
- Rediscovering the Wealth of Places (Cultural planning handbook for Canadian communities): Greg Baeker (2010)
- Roadmap to Success: Implementing the Strategic Plan: Thomas Plant (2010)
- Rural Community Economic Development: Wayne Caldwell (2013)
- Taking Back Our Cities: Gord Hume (2011)
- The Ontario Municipal Act: A User’s Manual: George Rust-D’Eye (2007) Toronto, Carswell
- Town & Gown: From Conflict to Cooperation (A guide to building positive relations between the municipality and its local post-secondary schools): Michael Fox (2014)

## ARTICLES

Municipal World Magazine

Below is a link to access a table of contents of articles published in in Municipal World Magazine related to municipal governance matters:

<http://www.municipalworld.com/index.php/Magazine/ArticleIndex>.

## PROVINCE OF ONTARIO RESOURCES

A wide variety of government publications and resources and related topics can be accessed from the Ministry of Municipal Affairs and Housing website:

- Local Government
- Land Use Planning
- Housing
- Building Regulation
- Provincial Policy Statement

[ontario.ca/mah](http://ontario.ca/mah)

The Learning Centre (guides, handbooks, info-sheets and training materials on a variety of ministry topics)

<http://www.mah.gov.on.ca/Page234.aspx>

### **Ontario Building Code**

[Ontario.ca/buildingcode](http://Ontario.ca/buildingcode)

### **Legislation and regulations**

[ontario.ca/e-laws](http://ontario.ca/e-laws)

### **Service Ontario Publications**

[ontario.ca/publications](http://ontario.ca/publications)

### **The Growth Plan for the Greater Golden Horseshoe and Places to Grow**

[ontario.ca/placestogrow](http://ontario.ca/placestogrow)

### **The Ontario Gazette (Notices, Regulations, Orders-in-Council)**

<http://www.ontario.ca/government/ontario-gazette>

## WEBSITES – OTHER

(These websites are provided for information only and are not created or controlled by the Province of Ontario.)

### **Public Sector Digest**

[publicsectordigest.com](http://publicsectordigest.com)

### **Canadian Urban Institute**

[canurb.com](http://canurb.com)

### **Intergovernmental Committee on Urban and Regional Research**

[muniscope.ca](http://muniscope.ca)

### **Municipal World**

[municipalworld.com](http://municipalworld.com)

## WEBSITES – MUNICIPAL ORGANIZATIONS

Association of Municipalities of Ontario (AMO) including

- Federation of Northern Ontario Municipalities (FONOM)
- Northwestern Ontario Municipal Association (NOMA)
- Ontario Municipal Administrators' Association (OMAA)
- Organization of Small Urban Municipalities (OSUM)
- Rural Ontario Municipal Association (ROMA)

[amo.on.ca](http://amo.on.ca)

### **Your Local Government (AMO)**

[yourlocalgovernment.com](http://yourlocalgovernment.com)

### **Link to Ontario Municipal Websites (AMO)**

<http://www.amo.on.ca/AMO-Content/Municipal-101/Ontario-Municipalities.aspx>

### **Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) Ontario Municipal Directory**

[amcto.com](http://amcto.com)

### **Association française des municipalités de l'Ontario (AFMO)**

[afmo.on.ca](http://afmo.on.ca)

### **Federation of Canadian Municipalities (FCM)**

[fcm.ca](http://fcm.ca)

**Municipal Engineers Association (MEA)**

[municipalengineers.on.ca](http://municipalengineers.on.ca)

**Municipal Finance Officers' Association of Ontario (MFOA)**

[mfoa.on.ca](http://mfoa.on.ca)

**Ontario Good Roads Association (OGRA)**

[ogra.org](http://ogra.org)

**Ontario Municipal Management Institute (OMMI)**

[ommi.on.ca](http://ommi.on.ca)

**Ontario Professional Planners Institute (OPPI)**

[ontarioplanners.on.ca](http://ontarioplanners.on.ca)

**Ontario Public Works Association (OPWA)**

[opwa.ca](http://opwa.ca)

## CONTACTS

There are five Municipal Services Offices (MSOs) in Ontario which are listed below. The Municipal Services Offices are the Ministry of Municipal Affairs and Housing's primary contact with municipalities. Staff come from a number of professional backgrounds, including land use planning, municipal administration and municipal finance. Staff provides support and advice to municipalities and, the general public in areas of local government and land use planning. Housing staff provides support and advice to Consolidated Municipal Service Managers and District Services Administration Boards on the delivery of affordable housing. Municipal Service Offices also provide to various Ministry divisions and branches, local information and policy input on emerging municipal issues and trends.

### MUNICIPAL SERVICES OFFICES

#### **MSO – Central**

777 Bay Street, 13th Floor, Toronto, ON M5G 2E5  
416-585-6226 Toll Free # 1-800-668-0230

(Dufferin, Durham, Halton, Hamilton, Muskoka, Peel, York, Niagara, Simcoe and Toronto)

#### **MSO – Eastern**

8 Estate Lane, Rockwood House, Kingston, ON K7M 9A8  
613-545-2100 / 1-800-267-9438

(Frontenac, Leeds & Greenville, Haliburton, Hastings, Kawartha Lakes, Lanark, Lennox & Addington, Northumberland, Ottawa, Peterborough, Prescott-Russell, Prince Edward, Renfrew, Stormont Dundas and Glengarry)

#### **MSO – Western**

659 Exeter Road, 2nd Floor, London, ON N6E 1L3  
519-873-4020 / 1-800-265-4736

(Brant, Bruce, Chatham-Kent, Elgin, Essex, Grey, Haldimand, Huron, Lambton, Middlesex, Norfolk, Oxford, Perth, Waterloo and Wellington)

#### **MSO – North (Sudbury)**

Suite 401, 159 Cedar St., Sudbury ON P3E 6A5  
705-564-0120 / 1-800-461-1193

(Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming Districts)

#### **MSO – North (Thunder Bay)**

Suite 223, 435 James St S., Thunder Bay ON P7E 6S7  
807-475-1651 / 1-800-465-5027

(Kenora, Rainy River and Thunder Bay Districts)

We hope that this guide has provided you with an overview of the many duties and challenges you can expect to face. The guide is no substitute for legal or financial advice, of course, but you may want to keep it handy for use as a quick source of information. For more detailed information on any aspect of your duties, you may wish to consult the reference sources listed in this section, talk to municipal staff, contact a professional advisor, or call a municipal or planning advisor in the nearest Municipal Services Office (MSO) of the Ministry of Municipal Affairs and Housing.









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## Ministry of Municipal Affairs and Housing

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