



Council Orientation

**Town of Deep River
January 9, 2019**

**Ministry of Municipal Affairs and Housing
Municipal Services Office - East**

Disclaimer

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

Minister of Municipal Affairs and Housing

The Honourable Steve Clark

MPP for Leeds – Grenville –
Thousand Islands and
Rideau Lakes



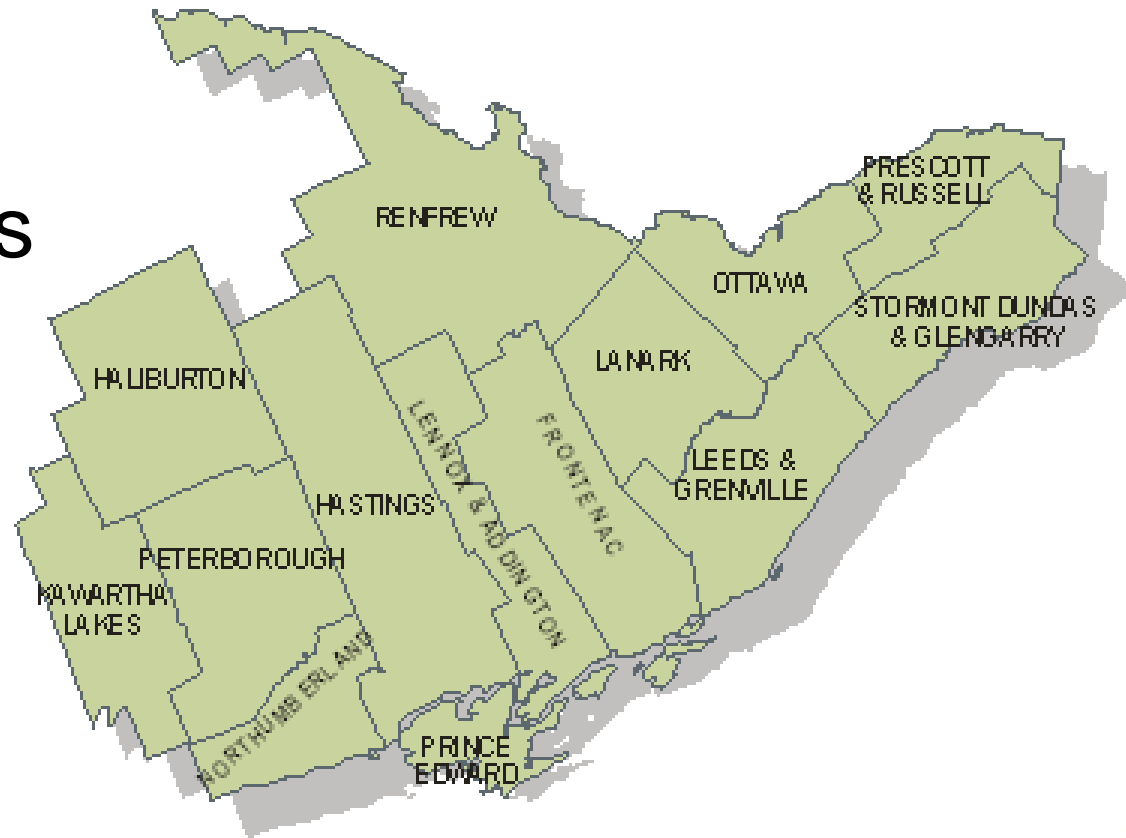
Ministry Legislation

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

Municipal Services Office – East Kingston

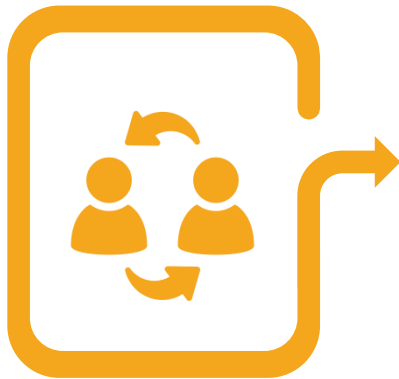
114 Municipalities

- 11 Upper Tiers
- 13 Single Tiers
- 90 Lower Tiers



Municipal Services Office: Our Role

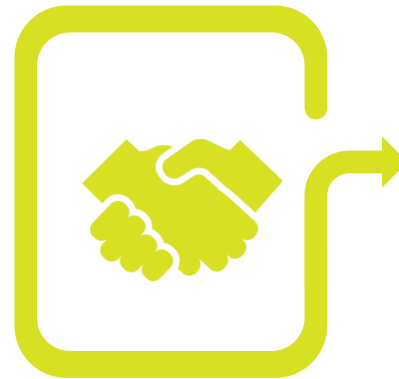
- Your primary point of contact with the Ministry
- Build municipal capacity by:



Provide information
and facilitate
connections regarding
government initiatives



Identify and
disseminate best
practices



Partner with
municipalities and
others for common
goals



Build effective
relationships

Focus of the Presentation

1. Role of Council, Councillor and Staff
2. Accountability and Transparency
3. Meetings
4. Municipal Government
5. Municipal Organization
6. Changes to Council Composition
7. Councillors as Law Makers
8. Exercising Municipal Powers
9. The Fiscal Context
10. Land Use Planning
11. Building Regulation
12. Emergency Management and Disaster Financial Assistance
13. Affordable and Social Housing
14. Resources

Section 1: Role of Council, Councillor and Staff

Council and Staff Roles

Council

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



Councillor

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



Head of Council

Act as the Chief Executive Officer of the municipality and provide leadership to council



Staff

Implement council's decisions and establish administrative practices and procedures

Council and Staff Roles:

Council

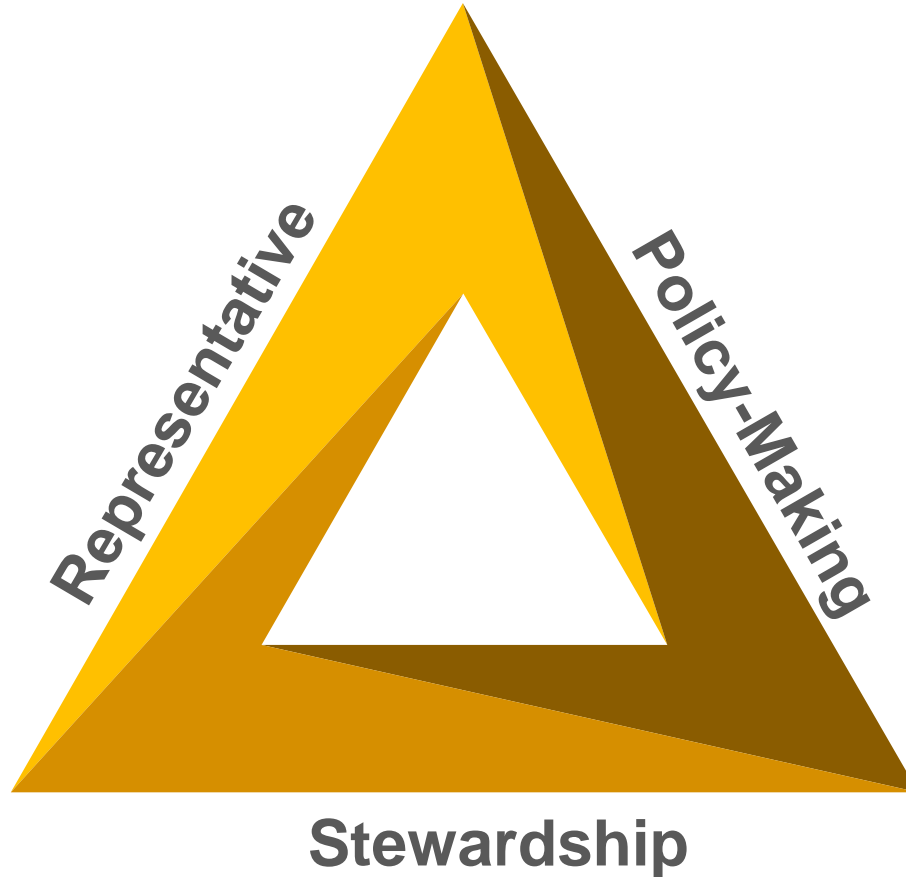
- The *Municipal Act, 2001*, sets out the role of council as follows:
 - represent the public and to consider the well-being and interests of the municipality
 - develop and evaluate the policies and programs of the municipality
 - determine services the municipality provides
 - ensure administrative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

Council and Staff Roles:

Head of Council

- The Municipal Act, 2001, sets out the role of the head of council as follows:
 - provide leadership to the council
 - preside over council meetings so that its business can be carried out efficiently and effectively
 - act as the chief executive officer
 - provide information and recommendations to the council with respect to the role of council:
 - ensuring both administrative and controllership policies, practices, and procedures are in place to implement the decisions of council
 - ensuring the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality
 - represent the municipality at official functions
 - carry out duties of the head of council under this or any other Act

Council and Staff Roles: Councillor



Representative Role

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

Policy-Making Role

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



Stewardship Role

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

Stewardship Role (continued)

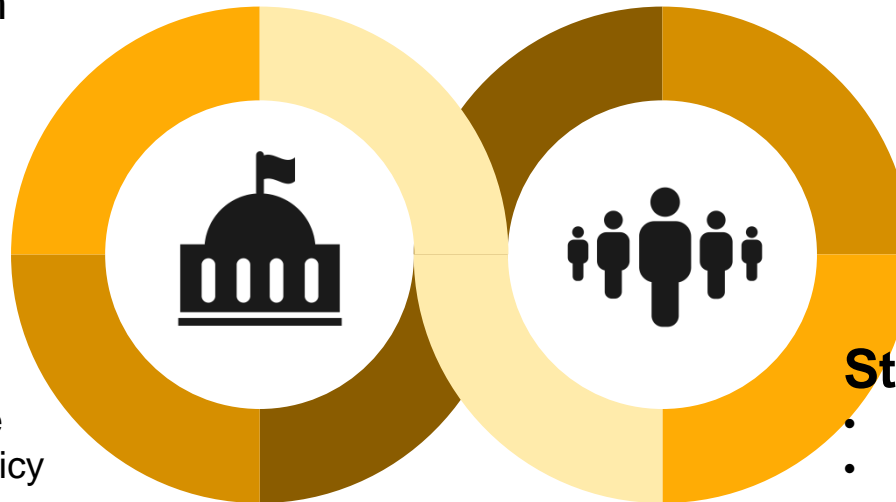
- Council monitors and measures municipality's administrative effectiveness and efficiency
- Working with staff, council can determine if policies are functioning well or if changes are necessary. To do this, council may wish to:
 - define corporate objectives and set goals and priorities
 - establish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

Role of Staff

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

Council - Staff Relationship and Roles

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



Council

- Representative
- Direction & Policy
- Decisions
- Political Leadership

Staff

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

Strategic Planning

- Strategic planning:
 - Is a process an organization uses to define a strategy or direction, and make decisions about allocating its resources (financial and staff resources)
 - Helps council develop strategies, goals, objectives and action plans to achieve the future it desires
 - Is forward-thinking and proactive
 - Can be a guide to decision making, project planning and budgeting
- The first step to develop a strategic plan is to identify the current state of the community through a SWOT analysis – **STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS**
- Once adopted, the success of the plan should be measured over time and reviewed periodically to ensure that it aligns with current issues, challenges and realities.

Succession Planning

- Process of identifying an organization's current and long-term staffing needs and developing internal talent to help meet those needs.
- Allows a municipality to predict where critical staffing requirements will be
- Provides time to adjust programs, training and recruitment to meet staffing requirements as efficiently and effectively as possible
- Can offer challenging and rewarding career possibilities and empower employees
- It can be linked to the municipality's strategic plan and be consistent with organizational objectives.

Helpful Considerations – Section 1



- Familiarize yourself with:
 - the policies/protocols that are in place in your municipality for handling issues such as public inquiries and complaints
 - the reporting relationship between staff members and members of council
 - your responsibilities for matters relating to personal privacy and other confidentiality issues, including relevant legislation and policies
- Remember that the relationship between staff and council is intertwined; it is important for council members and staff to respect one another's roles
- A municipal strategic plan can be an important part of municipal governance
- All municipalities are encouraged to create an employee succession plan that is aligned with their strategic plan

Section 2: Accountability and Transparency

Accountability and Transparency

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



* *The requirement for council to develop these policies comes into effect on March 1, 2019.*

Codes of Conduct

- Effective March 1, 2019 municipalities will be required to adopt a code of conduct for members of council and certain local boards
 - Mandatory subject matters that must be included: gifts, benefits and hospitality; respectful conduct; dealing with confidential information; and use of municipal or local board property/equipment
- Considerations when developing and reviewing codes of conduct:
 - working with local boards when developing local board codes of conduct
 - reviewing and updating existing codes of conduct, including consulting with the Integrity Commissioner
 - establishing standards of respectful conduct – what is considered to be harassment or bullying?
 - establishing a local process for handling complaints about a councillor's conduct
 - work with the Integrity Commissioner to establish an accessible and open complaints process for codes of conduct
 - review how the code fits with the other aspects of the local accountability regime (e.g. an existing council-staff relations policy)

Accountability Officers

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



**A municipal
Ombudsman**



**An Auditor
General**



**A lobbyist registry
and registrar**



**A code of conduct
for council and
local board
members**

- Effective March 1, 2019 municipalities will be required to ensure that the public has access to an Integrity Commissioner

Municipal Conflict of Interest



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

Municipal Conflict of Interest

- 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



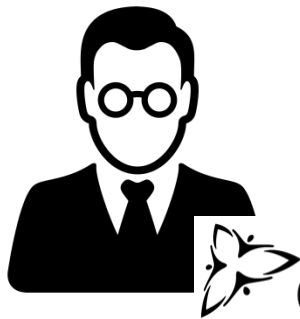
Municipal Conflict of Interest (Continued)

- As of March 1, 2019, the MCIA will:
 - generally prohibit members of council or of a local board from using their office to attempt to influence decisions or recommendations being considered by municipal or local board employees if the member has a pecuniary interest in the matter
 - require a member who discloses a pecuniary interest at a meeting to file a written statement of their interest
 - require municipalities and local boards to establish and maintain a registry of statements and declarations of interests of members; must be available to the public
 - include a broader range of penalties for contraventions

Municipal Conflict of Interest (Continued)

- As of March 1, 2019, under the *Municipal Act, 2001*, Integrity Commissioners will have a new responsibility:
 - could investigate a complaint concerning an alleged contravention of MCIA rules
- After completing an investigation, the Integrity Commissioner could decide to apply to a judge for a determination as to whether the member contravened the MCIA
 - person who made the complaint may apply to a judge (as long as certain conditions are met) if the Integrity Commissioner does not

Ontario Ombudsman



Ontario

Since **January 1, 2016**, the Ontario Ombudsman has a role with respect to municipalities.

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

Privacy and Confidentiality

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


Helpful Considerations – Section 2

- Familiarize yourself with:
 - municipal policy manuals
 - municipality's code of conduct for council members
 - changes to local accountability and frameworks, starting March 1, 2019
 - Municipal Conflict of Interest Act
 - role of the Ontario Ombudsman
 - protection of personal privacy and other confidentiality issues



Section 3: Meetings

Procedure By-law

- Every municipality and certain local boards must pass a procedure by-law to govern the calling, place and proceedings of meetings
- 
- The by-law describes how meetings are to be conducted
 - The by-law's contents are generally up to the municipality
 - The by-law may be considered a transparency and accountability tool
 - Regular review of the by-law ensures it effectively facilitates decision making
 - The by-law shall provide for public notice

Definition of a Meeting

- Meeting (*as defined in the Municipal Act, 2001*)
 - any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,
 - (a) a quorum of members is present
 - (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee

Meeting Considerations

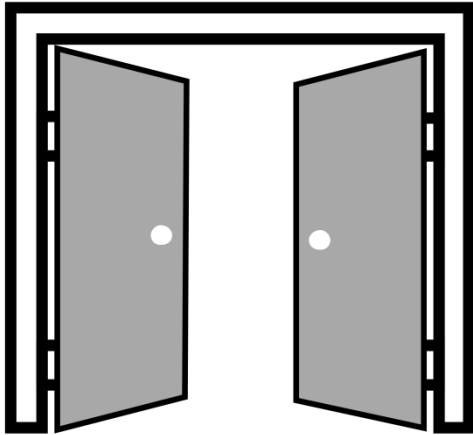
- When deciding about whether a gathering is a “meeting” for the purposes of the meeting rules in the Act, council may wish to consider:
 - is the subject matter something traditionally municipal or something municipalities make decisions about?
 - how many members are present?
 - did the attendees take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

Meetings

- Powers of a municipality are generally exercised by by-law – occurs at council meetings
- Quorum is generally required to conduct council business
- Committee (*as defined in the Municipal Act, 2001*)
 - any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards
- Electronic participation in meetings:
 - Municipalities may provide for members to participate in meetings electronically through their procedure by-laws
 - Members participating electronically cannot be counted in quorum

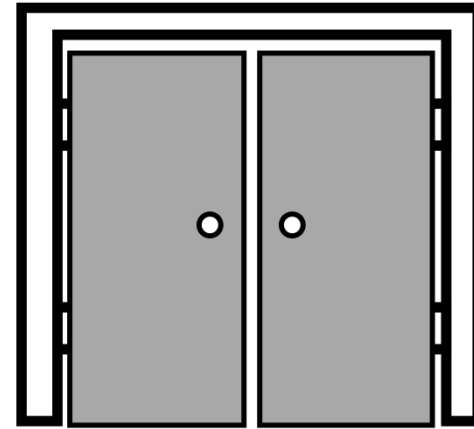
Open and Closed Meetings: Public Business

Open Meetings



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

Closed Meetings



- There are only a limited number of exceptions, for consideration of matters in closed session
- A resolution is required to be passed before going into closed meetings

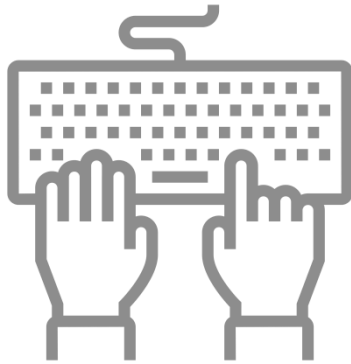
When A Meeting May Be Closed

- A meeting or part of a meeting may be closed to the public if the subject matter being considered is:
 - security of municipal or local board property
 - personal matters about an identifiable individual
 - proposed or pending land acquisition or disposal
 - labour relations or employee negotiations
 - litigation or potential litigation
 - advice subject to solicitor-client privilege
 - a matter that can be closed under the authority of a statute other than the Municipal Act, 2001
 - education or training sessions that meet certain conditions
 - information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency,
 - a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization,
 - a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value,
 - a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

When A Meeting Shall Be Closed

- A meeting or part of a meeting shall be closed to the public if the subject matter being considered is:
 - a request under the Municipal Freedom of Information and Protection of Privacy Act, if the council, board, commission or other body is the head of an institution for the purposes of that Act; OR
 - an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ontario Ombudsman, a municipal Ombudsman, or meeting investigator.

Minutes - Record of Meeting



Record without note or comment all:

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



The record shall be made by the:

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

Closed Meeting Procedures

- Before holding a meeting closed to the public the council, local board or committee must adopt a resolution stating:
 - the fact of holding the closed meeting
 - the general nature of the matter to be discussed
- Generally, votes at a closed meeting may take place only in limited circumstances. These may include:
 - to give instruction to staff
 - procedural matters (example – adjournment)
- Minutes are required of all meetings, whether closed or not

Closed Meeting Investigation

- 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 meeting investigator who may report with recommendations to council
- If the municipality does not appoint a meeting investigator, by default, it is the Ontario Ombudsman

Helpful Considerations – Section 3



- Remember - generally, the powers of your municipality must be exercised by council through by-law
- Procedure by-laws govern the calling, place and proceedings of meetings
- Required to record, without note or comment, all resolutions, decisions and other proceedings of the council, regardless of whether the meetings is open or closed to the public
- Meetings must be held in open session with limited exceptions
- Public can request for investigation by meeting investigator if they believe a meeting was closed improperly

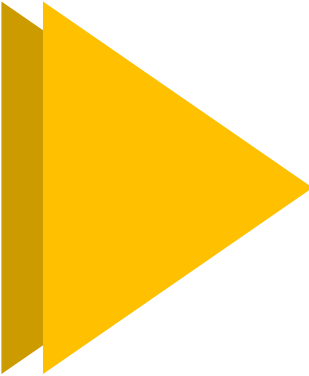
Section 4 : Municipal Government

Municipal Government



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

Municipal Roles and Responsibilities

- 
- The Municipal Act, 2001, establishes the basic framework for municipal government
 - Authority for important municipal activities can also be found in other statutes:
 - Examples include: Planning Act, Building Code Act, 1992, Police Services Act, Fire Protection and Prevention Act, 1997, Safe Drinking Water Act, 2002, Ontario Works Act, 1997

Service Managers

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

Municipal Restructuring

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

Committees, Local Boards and Other Special Purpose Bodies

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

Committees

(may be part of local governance structure)

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

Local Boards

(may carry special legal status)

- Particular rules/rights and responsibilities
- Not all special bodies are local boards
- Each needs to be looked at individually

Municipal Services Boards

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

Committees, Local Boards and Other Special Purpose Bodies

- Examples include:

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
land division committees

Council-Committee Relations

- Municipalities may have standing committees of council, or other committees that focus on particular areas of community interest
- Generally councils decide on the make-up of committees and members often include members of council, municipal staff and citizens.
- Usual role of municipal committees is to provide advice and guidance to council on matters related to the committee's mandate and provide opportunities for volunteers to bring views and ideas from a range of perspectives
- Provides opportunity for collaborative decision making and/or integrated municipal service delivery

Helpful Considerations – Section 4



- Consider deepening your knowledge of municipal functions and becoming familiar with the programs and services that your municipality does or does not provide
- If part of a two-tier structure, familiarize yourself with the responsibilities of the upper-tier and lower-tier municipalities in your area
- Consider local circumstances when creating municipal committees and boards
- Increase your knowledge of Indigenous communities and peoples in and near your municipality, and consider how their interests may be represented in the various bodies that make recommendations to council
- Become familiar with the scope and nature of the work done by local boards, and other local bodies in your municipality. If appointed as a member of a local body, familiarize yourself with the responsibilities of the position
- Rely on municipal staff to provide guidance and expertise on possible governance structures for program and service delivery

Section 5 : Municipal Organization

Municipal Organization

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

01

Upper tier municipalities

within a two tier municipal structure

02

Lower tier municipalities

within a two tier municipal structure

03

Single tier municipalities

not part of a two tier structure

Local Government and Indigenous Peoples

- First Nation and Métis communities can be located adjacent to and/or within municipal boundaries
- Need to be aware of Indigenous history, culture and interests as well as asserted and established Aboriginal rights in your geographic area
- Much of Ontario is covered by treaties between the Crown and First Nations
- Ensure municipal decision-making considers commitments made in treaties, established or asserted Aboriginal rights and Indigenous interests, along with the needs and perspectives of urban and rural off-reserve Indigenous communities

Engaging With Indigenous Communities

- Look for opportunities for collaboration between municipalities and Indigenous communities on matters of mutual interest
- Engaging/consulting with Indigenous communities who share your municipality's interests may create stronger communities in areas such as:



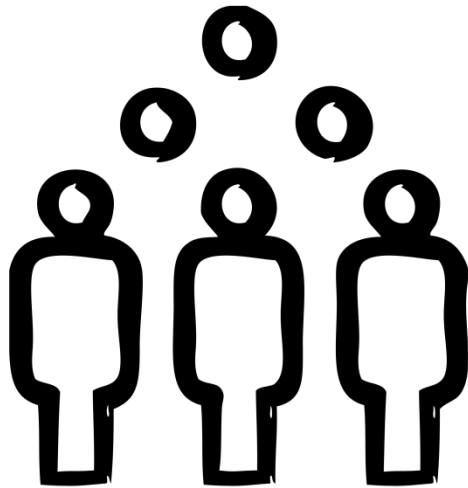
Helpful Considerations – Section 5



- Understand the broader roles, responsibilities and interests of councils, including both upper- and lower-tier municipalities, as well as the respective communities
- Consider local circumstances when creating municipal committees and boards
- Seek municipal staff guidance and expertise on possible governance structures for program and service delivery
- Refer to terms of references for your municipality's local boards, other local bodies, and committees, to understand the scope and nature of their work
- Seek out collaborative opportunities with local stakeholders to solve complex issues facing the community
- Make efforts to foster strong municipal-Indigenous relationships in decision-making processes for your municipality

Section 6 : Changes to Council Composition

Changes to Council Composition



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

Changes to Upper Tier Council Composition

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

Filling a Vacancy on Council

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

Filling a Vacancy on Council (Continued)

- If selecting appointment, council is able to decide what process it will use to choose the person it appoints
 - Appointee must consent to the appointment and be eligible to hold office
- If council decides to hold a by-election, council must pass a by-law to have a by-election
 - The municipal clerk is responsible for conducting the by-election and fixing nomination day
 - Voting day is 45 days after nomination day

Temporary Replacements for Upper-Tier Council

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

Pregnancy and Parental Leave

- The *Municipal Act, 2001* provides the opportunity for members to take pregnancy and parental leave
- Council member seats do not become vacant due to absences for a period of 20 consecutive weeks or less related to the member's pregnancy or the birth or the adoption of the member's child.
- Councils may decide to extend this period and provide for a longer leave for councillors
- As of March 1, 2019, municipalities will be required to establish policies regarding pregnancy and parental leave

Helpful Considerations – Section 6



- Familiarize yourself with the provisions of the *Municipal Act, 2001*
- When reviewing council composition, you may wish to consider:
 - the principle of representation by population
 - geographic criteria
 - social criteria, such as communities of interest
 - projected population growth, voters' lists and federal census population data

Section 7 : Councillors as Law Makers

Councillors as Law Makers



- Municipal by-laws have a significant impact on residents in the municipality
- Municipal policies will shape the long-term health and well-being of your community.
- There are various legal limitations on your municipal powers.

Legal Considerations on Exercising Power



The *Constitution Act, 1982* (formerly the *British North America Act, 1867*)



The Canadian Charter of Rights and Freedoms



The Ontario Human Rights Code



Other key federal and provincial legislation that affect municipalities
Municipal Act, 2001; Planning Act

Sources of Law

- As a councillor it is important to consider the statutory authority for your actions
 - Statute law
 - *Municipal Act, 2001*
 - other general acts: e.g. *Planning Act, Building Code Act*
 - acts specific to municipalities: e.g. *City of Hamilton Act, 1999*
 - private acts
 - regulations
 - federal statutes: e.g. *Canada Mortgage and Housing Act*
 - Administrative law
 - decisions made by boards and tribunals
 - Boards and tribunals
 - examples include: Local Planning Appeal Tribunal (LPAT), Ontario Labour Relations Board, Workplace Safety and Insurance Board, Assessment Review Board
 - Case law
 - court decisions

Municipal Powers

- *Municipal Act, 2001* and other provincial legislation gives municipalities a variety of powers
- Powers under the Municipal Act, 2001 fall into various categories:

**Natural persons
powers**

**Broad permissive
powers**

**Spheres of
jurisdiction in a
two-tiered system**

Specific powers

- Given the complexity of municipal powers, seek advice from municipal staff and/or municipal solicitor

Municipal Powers

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

Municipal Powers (continued)

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

*For two-tier municipalities these powers are spheres of jurisdiction and not broad permissive powers

Municipal Powers (continued)

- Spheres of jurisdiction in two-tiered systems:
 - Municipalities are also provided with spheres of jurisdiction (areas where municipalities have authority) to address the division of powers between upper-tier and lower-tier municipalities
 - Spheres include rules about whether the upper-tier or lower-tier municipality (or both) may pass bylaws within all or part of each sphere
 - highways, including parking and traffic on highways
 - transportation systems, other than highways
 - waste management
 - public utilities
 - culture, parks, recreation and heritage
 - drainage and flood control, except storm sewers
 - structures, including fences and signs
 - parking, except on highways
 - Animals*
 - economic development services*
 - business licencing*

**For two-tier municipalities these powers are spheres of jurisdiction and not broad permissive powers*

Municipal Powers (continued)

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

Municipal Powers (continued)

- Specific Powers:
 - Are powers given to municipalities under any act other than the broad permissive powers and the spheres of jurisdiction
 - could include specific powers under the *Municipal Act, 2001* or many other statutes
- Some limits are placed on municipal powers. Generally,
 - bylaws cannot conflict with federal or provincial statutes or regulations
 - broad permissive powers and the spheres of jurisdiction are subject to procedural requirements and other limitations existing in specific powers
 - except where expressly authorized, a municipality can only exercise its powers within its municipal boundaries
 - and the province may, by regulation, further limit the powers of a municipality

Helpful Considerations – Section 7



- Familiarize yourself with
 - *Constitution Act, 1982, Canadian Charter of Rights and Freedoms*, Human Rights Code
 - *Municipal Act, 2001* and accompanying regulations
 - any municipal specific private acts
- Remember: municipal powers may be complex
- Understand the spheres of jurisdiction in a two-tier system and the implications for upper-tier and lower-tier municipalities

Section 8 : Exercising Municipal Powers

Delegation

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

By-laws and Resolutions

- **By-laws**

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

- **Resolutions**

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

Procedural Requirements

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

Legal Considerations

- Municipalities are responsible and accountable governments and many important legal considerations may apply to their actions
 - Hearings
 - for some actions council may decide it needs to hold a hearing for legal or other reasons (e.g. fair treatment of people involved, such as an individual license holder)
 - Good faith, reasonableness and the courts
 - generally, municipal decision must not be based on fraud, oppression or improper motive
 - courts decide about good faith and other legal issues on a case-by-case basis

Enforcement of By-laws

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

General Responsibility for Enforcement

- Municipal enforcement personnel (e.g. by-law enforcement officers) hired by council
- Action by the public – through the courts if dissatisfied with the level of enforcement provided by the municipality
- Action by police – by the public where there is a municipal police force or Ontario Provincial Police
- Offences and penalties
 - Municipal Act, 2001 provides that municipalities may establish a system of fines for offences under a by-law of the municipality
- Administrative penalties
 - are a civil mechanism for promoting compliance with municipal by-laws
- Other by-law enforcement powers
 - Municipal Act, 2001 provides for other powers related to by-law enforcement including: powers of entry, search and seizure, applications to courts, etc.

Actions Against the Municipality

Ultra Vires

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

Civil Action for Damages

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

Appeals

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

Judicial Review

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

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

Helpful Considerations – Section 8

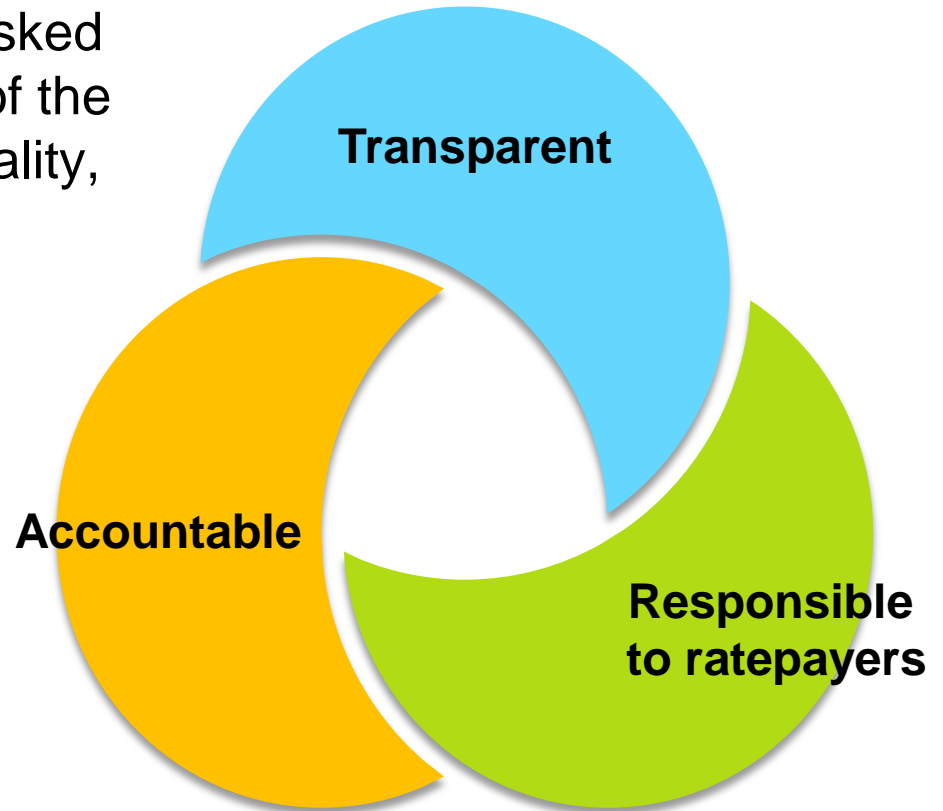


- Be aware of the legal framework
- Familiarize yourself with provincial legislation
- Consult a lawyer for legal advice
- Does your municipality have adequate insurance coverage to protect both staff and council?
- Learn how to access federal and provincial statutes, regulations and orders on-line
- Support the development or enhancement of a basic municipal library that includes various municipal documents such as:
 - minutes, by-laws, resolutions, policies
 - official plans, strategic plans, studies
 - budgets and other financial documents
 - inventories, registries
- Consider options to enforce municipal by-laws, such as offences and administrative penalties

Section 9: The Fiscal Context

Fiscal Context

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



Budgeting



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

Budget Preparation

- Budget cycle
 - Timing varies amongst municipalities as to when budgets are started and finalized. However, the steps usually taken include:
 - establishing a budget timetable
 - initiating a budget plan, gathering supporting data and guidelines
 - evaluating/reviewing draft estimates
 - compiling an overall budget document
 - approval of the budget and levying by-law(s)
 - budget implementation and budgetary control.
- Staff will be able to advise as to your municipality's process.

Operating and Capital Budgets

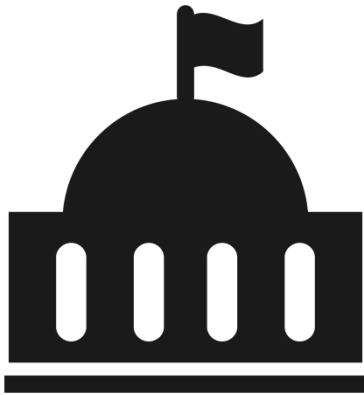
OPERATING

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

CAPITAL

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

Financial Reporting to the Public



For Municipalities

1. Audited Financial Statements
2. Financial Information Return (FIR)



For Service Managers

Service Manager Annual Information Return (SMAIR)

Financial Information Return (FIR)

- The FIR is an invaluable resource for both the province and the municipality
- The province uses it for many purposes including:
 - calculating grant amounts
 - developing policies and programs
 - monitoring the financial status of municipalities
 - preparing municipal debt limit reports
 - requests for financial and statistical data

Financial Information Return (FIR)

- From a municipal perspective, the FIR is an integral tool with many applications including:
 - preparation of year over year comparisons, trend analysis, forecasting
 - performance measurement and for comparative purposes with other like municipalities on key indicators (for example, debt and reserve levels)
 - supporting land use planning, strategic planning, and asset management planning.

<https://efis.fma.csc.gov.on.ca/fir/>

Data Based Analysis

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

Sources of Municipal Revenue

Municipal revenue may be broadly categorized as tax and other revenue.



Tax Revenue

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



Other revenue

Examples: Conditional and unconditional grants, User fees for services, Licensing fees, Investment income, Development charges, Fines and penalties, Local improvement charges

Capital Financing Sources

Main sources of capital funding

Internal sources

- transfer or use of funds from or identified in the current-year operating budget
- existing reserves and reserve funds.

External sources

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

Debt, lease or other kinds of financing

- External borrowing
- Long-term leases
- Other financing involving long-term payment obligations for the municipality

Debt Management

25%

ARL



- Generally, a municipality may not commit more than 25% of its total own-purpose revenues to service debt and other long-term obligations without prior approval from the Local Planning Appeal Tribunal (LPAT).
- This limit is known as the annual repayment limit (ARL)
 - The ARL is calculated using the data that municipalities submit annually through the FIR
- There are indicators municipalities can use to figure out its ability to service its debt
- Pay-as-you-go financing versus use of debt is a municipal decision.

Property Taxes

- Assessment/tax base:
 - Municipal Property Assessment Corporation (MPAC) regularly assesses all properties based on current value
 - cumulative value of all assessment in the municipality is the tax base.
- Tax rates are applied to taxable assessment to determine the amount of taxes to be paid
 - separate municipal tax rate for each property class within municipalities
 - provincially established rates for education purposes.

Property Taxes

$$\text{Residential Tax Rate} = \frac{\text{Amount to be raised through taxes}}{\text{Total weighted assessment}}$$

- Generally, to determine tax rates of other classes, the residential rate is multiplied by the respective class' tax ratio.
- For the purposes of this practical calculation, weighted assessment means the assessed value of property (as determined by MPAC) multiplied by the tax ratio for its class.

Tax Billing and Collections

- **Billing:**
 - Tax bills are issued on the basis of the returned assessment roll as provided by MPAC
 - Lower and single tier municipalities issue tax bills
 - Council determines whether taxes are to be paid in installments and how many, when due, and penalties for late payment.
- **Collection:**
 - There are options as to how to collect unpaid taxes, for example:
 - court proceedings
 - seizure of chattel
 - rent attornment
- **Tax sale process**

Shared Service Arrangements

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



Municipal Asset Management Planning

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

Overview of Asset Management Regulation

Strategic Asset Management Policy (by July 1, 2019)

Requires municipalities to outline commitments to best practices and continuous improvement

Asset Management Plan: Phase 2 (by July 1, 2023)

Builds out the Phase 1 plan to include **all assets**

Additional Information

- Municipalities under 25,000 not required to discuss detailed risk analysis or growth.
- Plans would be updated every 5 years; annual progress update given to council.

Asset Management Plan: Phase 1 (by July 1, 2021)

For **core assets**:

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

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

Builds on Phase 1 and 2 by adding:

- **Proposed levels of service**
- **Lifecycle management and Financial strategy**

Helpful Considerations – Section 9



- Public input is essential in the municipal budget process. Public input promotes trust in the municipality and ensures council is aware of residents' opinions.
- Before voting on the adoption of a budget, as a municipal councillor you may wish to have a in-depth 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.
- Ensure that the reporting requirement timelines are met to help ensure access to capital programs and receipt of provincial grants on time.

Helpful Considerations – Section 9

(Continued)



- Take advantage of the opportunity to use the breadth of FIR data to support evidence-based decision-making
- Become familiar with your FIR, and use it!
- Review your municipality's asset management plan to 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 into your municipality's asset management planning.

Section 11: Building Regulation

The Building Code

- The Building Code Act, 1992 (BCA) is the legislative framework governing the construction, renovation and change of use of buildings
- The Building Code is a regulation made under the BCA:
 - establishment of standards for public health and safety, fire protection, structural sufficiency, energy conservation, water conservation, environmental integrity, and barrier-free accessibility
 - there are exceptions for septic systems (particularly in the north and east regions) where public health units or conservation authorities do those
- Generally, municipalities are responsible for the enforcement of the Act and the Building Code within their jurisdiction
- Councils must appoint a chief building official (and building inspectors, as necessary) to enforce the BCA and Building Code within their jurisdiction.
- Municipalities must establish and enforce a code of conduct for their chief building official and building inspectors
- Building services are cost-recoverable under the BCA and that fees can be set to cover the cost of building department operations (but cannot be used for other purposes)

Property Standards Bylaws

- The Building Code Act, 1992 gives municipalities the power to adopt a municipal property standards bylaw to:
 - establish standards for the maintenance and occupancy of properties within all or part of the municipality
 - require properties that do not confirm to the standards to be brought into conformity
 - establish a Property Standards Committee to hear appeals from property owners and occupants who have received orders to comply with the bylaw
- To adopt a property standards bylaw, a municipality must have policies relating to property conditions in their municipal official plan or seek the Minister's approval of a bylaw that sets out a policy statement containing provisions relating to property conditions
- Property standards bylaws enable municipal property standards officers to inspect properties and issues order to enforce property standards
- Municipal discretion to decide who delivers this function it does not have to be Chief Building Official
- A municipality may also establish a system of administrative penalties to assist the municipality in promoting compliance with its property standards by-laws.

Helpful Considerations – Section 11



- Municipalities can enter into cost sharing agreements with neighbouring municipalities, or procure the services of a Registered Code Agency, to help mitigate costs of enforcing the Building Code if needed
- Familiarize yourself with the code of conduct that outlines appropriate standards of behaviour and practices governing activities of chief building officials/inspectors
- Remember – the building department is to help ensure the health and safety of the public
- Building officials operate independently and without interference from council or individual members of council when exercising the powers and duties assigned under the *Building Code Act*
- Building permit revenue can only be used for costs of delivering services related to administration and enforcement of the *Building Code Act*

Questions????

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