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BROWNLEE LLP

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COUNCILLOR HANDBOOK

(October 2017)



BROWNLEE LLP
Barristers & Solicitors

TABLE OF CONTENTS

ALLOW US TO INTRODUCE OURSELVES	2
FORWARD	3
1. INTRODUCTION TO MUNICIPAL GOVERNMENT.....	5
1.1. Municipalities in Context	5
1.2. Legal Framework	6
1.3. Municipal Purposes and Powers.....	6
2. ROLES, RESPONSIBILITIES AND RELATIONSHIPS	7
2.1. Council.....	7
2.2. Individual councillors.....	8
2.3. Chief Elected Official (Mayor/Reeve)	10
2.4. Chief Administrative Officer	11
2.5. Minister of Municipal Affairs.....	12
3. INTERMUNICIPAL COLLABORATION.....	13
4. CONDUCTING COUNCIL BUSINESS.....	14
4.1. Valid Action	14
4.2. Meetings	15
4.3. Public Meetings and In Camera Proceedings	16
4.4. Motions and Resolutions	17
4.5. Voting	18
4.6. Recorded Votes	18
4.7. Minutes.....	19
4.8. Bylaws.....	19
5. PUBLIC PARTICIPATION.....	20
6. BUDGETING AND FINANCIAL MANAGEMENT	21
7. CODE OF CONDUCT AND ETHICS	23
8. PECUNIARY INTERESTS.....	24
8.1. Who is a councillor's family?	24
8.2. Exceptions to the Pecuniary Interest Rules.....	25
8.3. Bias	25
9. PERSONAL LIABILITY OF COUNCILLORS	26
9.1. Protection from Liability.....	26
APPENDIX 1: Hallmarks of an Ethical Councillor.....	27

ALLOW US TO INTRODUCE OURSELVES

Who We Are

Brownlee LLP is a mid-sized, regional law firm with offices in Calgary and Edmonton, providing the breadth and depth of service of a full-service law firm throughout Alberta, Saskatchewan and the Yukon, Nunavut and Northwest Territories. With extensive and long-standing practices in almost all legal disciplines, Municipal and Administrative Law, Civil Litigation, and Corporate-Commercial Law remain the cornerstones and core strengths upon which we continue to build extensive specialized and unique practice areas. For municipalities, we are proud to offer the largest municipal legal team in Western Canada able to provide invaluable strategic legal advice as your community evolves.

Our firm was founded in the late 1930's by the late John E. Brownlee, the 5th Premier of Alberta, who was the original architect of a client-centered service focused on local issues important to the client wherever they are located across this Province and the Territories. These traditions continue to this day, which in turn provide for a constant stimulus for innovation in response to the needs of our clients, and issues and adversities that they may face.

What We Do

The firm draws upon the skills and expertise of its many dedicated practice groups which have arisen and been created in response to our clients' requirements. Working within these teams, and on a broader level as a firm built upon common history, purpose and principles, we service the extremely broad and diverse nature of legal services required by our clients and the diverse economic landscape. Today, this unique approach to legal services has served to make Brownlee LLP a very trusted and recognizable name throughout Western Canada.

Our municipal client services include:

Administrative Law	Infrastructure & Utilities	Planning &
Construction and	Intellectual Property	Development
Procurement	Municipal Commercial	Privacy & Access to
Construction Litigation,	Transactions &	Information
Bond Claims & Builders	Contracting	Property Taxation &
Lien Litigation	Municipal Bylaw	Assessment
Employment & Labour	Enforcement	Public Sector Litigation,
Environmental	Municipal Governance	Liability & Defence
Human Rights	& Authority	Real Estate

FORWARD

Congratulations on being elected to council. Being chosen to serve in this leadership capacity is an honour and a privilege. Municipal government is the government closest to the people and offers you a unique opportunity to impact your community. The role of councillor can be incredibly rewarding and challenging. Councils are responsible for providing a wide array of services and facilities their communities depend upon daily and are custodians of considerable public resources and assets.

This council term will see significant changes to the way councils govern, are funded and plan. The Government of Alberta's multi-year review of the *Municipal Government Act* is the first major overhaul of this statute since the Act as we know it was introduced in 1995. As the second largest piece of legislation in Alberta, it is the law under which all municipalities are empowered to govern. Although the entire Act has been scrutinized, the review was structured around three broad themes:

- Governance and Administration
- Planning and Development
- Property Assessment and Taxation

Some of the legislative reforms being ushered in as a result of the review include:

➤ Governance and Administration

- Mandatory public participation policies
- Mandatory code of conduct bylaws for elected officials
- Collaboration with indigenous communities
- Enabling extended councillor absences for parental leave
- Mandatory 3 year operating plans and 5 year capital plans
- Expansion of the mandate of the Alberta Ombudsman to include municipalities

➤ Planning and Development

- Growth Management Boards for the Edmonton and Calgary regions
- Mandatory municipal development plans
- Mandatory intermunicipal development plans
- Mandatory intermunicipal collaboration frameworks
- Mandatory joint use agreements with school boards
- Expanded off-site levy powers to build community recreation facilities, fire halls, police stations and libraries

➤ Assessment and Taxation

- Maximum property tax ratio of 5:1 between the highest non-residential and lowest residential property tax rate
- Enabling the creation of subclasses for non-residential property tax rates
- Designated industrial property assessment will become a Provincial responsibility

It is an exciting and challenging time to be a councillor in Alberta! This handbook is a capacity-building tool for councillors whether serving on council for a city, town, village, summer village, municipal district or specialized municipality. It is a resource guide. Refer to it often. While it is based on the relevant legislation and emerging best practice in municipal governance, it is not a substitute for the *Municipal Government Act* or legal advice.

PLEASE NOTE:

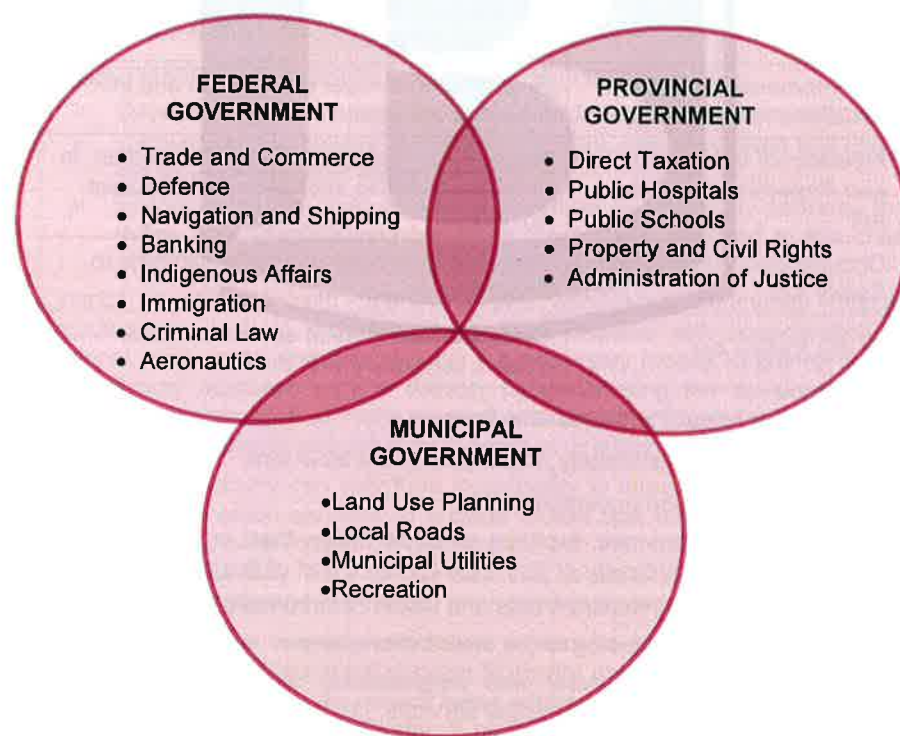
This handbook assumes that the MGA amendments passed to-date and the draft regulations will be proclaimed in force. As of the date of this publication, the amendments are not yet in force and may be subject to changes.

1. INTRODUCTION TO MUNICIPAL GOVERNMENT

1.1. Municipalities in Context

Canada is a federal state with governmental power distributed between the federal authority (Parliament and the Senate) and several regional authorities (the Legislatures of the various Provinces and Territories). Under the terms of the Canadian Constitution, the federal government has authority over areas affecting all Canadians, such as national defence, foreign policy, criminal law and citizenship. Provincial/Territorial Legislatures have constitutional authority to make laws respecting, for example, health care, education, transportation (highways), property and civil rights.

Where do municipalities fit in? Well, a municipality is not a constitutionally-recognized order of government with specific powers, but rather **exercises statutory powers delegated to it by the Province** that creates the municipality. Each municipality is a corporation, which is an ongoing legal entity. The municipal council makes decisions necessary to operate the municipality on behalf of the corporate entity and is directly accountable to the local community.



1.2. Legal Framework

Municipalities operate within the laws established by the provincial government. In Alberta, municipalities are formed, and may be restructured, amalgamated or dissolved, by order of the Provincial Cabinet on the recommendation of the Minister responsible for the *Municipal Government Act* (the "MGA"). Each city, town, village, summer village, municipal district or specialized municipality is constituted under the authority of the MGA.

The MGA provides a legislative framework reflecting modern community expectations and gives councils broad power to plan for and provide local services and facilities. The MGA is administered by the Minister of Municipal Affairs through the department of Alberta Municipal Affairs.

The focus of this handbook is on the powers, duties and obligations prescribed by the MGA. There are, however, a number of other statutes that apply to the activities of municipal councils including but not limited to:

Statute	Relationship to Municipal Government
<i>Emergency Management Act</i>	Requires council to appoint an emergency advisory committee and delegates authority to council to direct and control local emergency response.
<i>Environmental Protection and Enhancement Act</i>	Regulates municipal waterworks and storm drainage systems.
<i>Freedom of Information and Protection of Privacy Act</i>	Requires municipalities, as public bodies, to provide access to information and protect privacy.
<i>Occupational Health and Safety Act</i>	Requires municipalities, as employers, to adhere to the Act.
<i>Traffic Safety Act</i>	Delegates authority to council to make bylaws consistent with the Act

1.3. Municipal Purposes and Powers

The purposes of a municipality prescribed by the MGA are:

- To provide good government;
- To provide services, facilities or other things that, in the opinion of council are necessary or desirable for all or part of the municipality;
- To develop and maintain safe and viable communities;
- To foster the wellbeing of the environment; and
- To work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services. (s. 3)

While municipalities have the power to make local laws, by passing bylaws, those powers are limited to the powers granted by the Legislature by way of statutes, such as the MGA, and other legislation, including regulations, orders-in-council and ministerial orders. Municipalities enjoy "natural person" powers (s. 6) and some powers that corporations have generally (e.g. the ability to enter into contracts), although natural persons and ordinary corporations do not have law-making, taxation or regulatory powers.

2. ROLES, RESPONSIBILITIES AND RELATIONSHIPS

The business of municipal corporations is complex; however, in its simplest form, municipalities are governed by their council (through the majority will of the councillors) and administered/operated by the chief administrative officer ("CAO") and other municipal employees who comprise the administration. The MGA establishes a set of ground rules for the respective roles and responsibilities of these various municipal actors.

2.1. Council

Each council is an independent, statutory body responsible for governing the municipality. The council comprises all the elected representatives, or councillors, who work together to provide leadership to and serve their local community. The elected council oversees the activities of the municipality but is not involved in the day-to-day operations of the municipality. The council is accountable to the local community.

As the municipality's governing body, council is responsible for:

- Developing and evaluating the policies and programs of the municipality;
- Carrying out the powers, duties and functions expressly given to it under the MGA or any other enactment; and
- Ensuring that the chief administrative officer appropriately performs the duties and functions and exercises the powers assigned to the chief administrative officer. (s. 201)

Council is charged with identifying and prioritizing community needs, deciding how best to provide services and facilities with consideration to regional cooperation and how to raise the necessary money to pay for them. Council may approach service delivery by undertaking the development of municipal services such as roads, water systems and other services or facilities locally or in partnership with other municipalities or regional partners.

Local service delivery can vary from municipality to municipality. Councils are free to decide which services to provide locally and the level or quality of services they provide, based on discussions with their community about their needs and what they want to pay for. This is done through the strategic planning, budgeting and community engagement processes.

The MGA provides councils with broad powers to provide responsible and accountable local government in order to create and sustain safe and viable communities. However, if a council takes action or makes a decision without the necessary legislative authority, it may be held by a court of law to be acting beyond its power.

A council is prohibited from exercising or performing a duty that is, by law, specifically given to the chief administrative officer or a designated officer of the municipality *s. 201(2)). For example, it is the responsibility of a designated officer, not a councillor, to deal with contraventions of municipal bylaws.

Council needs to focus on providing strategic leadership. Leave day to day operations to the employees hired to carry out those duties.

Where a municipality can do something and the legislation is not specific as to who may act on behalf of the municipality, or where a municipality specifically exercises its natural person powers, then the act that is done or the powers that are exercised may be exercised by council or by the CAO, unless council says otherwise. (s. 202)

Council has the authority, by bylaw, to delegate powers to a council committee, the CAO, or a designated officer unless the MGA or a municipal bylaw says otherwise. (s. 203(1)) Many councils delegate functions to specialist committees that may include councillors or members of the public, or a combination of both. These committees provide an opportunity to participate in council decision-making at a more detailed level.

However, a council **cannot** delegate the following:

- The power to pass bylaws;
- The power to make, suspend or revoke the appointment of a person to the CAO position;
- The power to adopt budgets;
- The power to cancel, reduce, refund or defer taxes; or
- The duty to decide appeals imposed on it unless the delegation is to a council committee and authorized by bylaw. (s. 203(2))

Council decision-making is rooted in the democratic principle of majority-rule.

2.2. Individual councillors

A council is only as effective as its members. As a member of council, residents chose you to be a community leader. You are likely full of ideas and ready to get down to business carrying out the mandate given to you by residents; however, you are 'just' one member of council and municipal government is a team sport. You will need to work with your fellow councillors to carry out your ideas; **legal authority to make decisions rests with council as a whole.**

One of the most important roles of a councillor is to participate in policy decision making on behalf of the community. This involves working as part of a team of councillors to make decisions and policies that guide the activities of the council. This includes setting a broad strategic direction for the community and ensuring the community's needs are adequately met within the budgetary limits set by council.

Councillors are elected individually and expected to participate and vote as individuals.

By statute, every councillor is legally obligated to:

- Represent the public, and consider the wellbeing and interest of the municipality as a whole;
- Promote an integrated and strategic approach to intermunicipal land use planning and service delivery with neighbouring municipalities;
- Participate in developing and evaluating policies and programs of the municipality;
- Participate in council meetings and meetings of council committees or other bodies you are appointed to by council;
- Obtain information about the operation or administration of the municipality from the CAO or designate;
- Maintain confidentiality over matters that are discussed in private at a council or council committee meeting until those matters are discussed at a meeting held in public;
- Adhere to the code of conduct established by the council; and
- Perform any other duties or functions prescribed by the MGA or any other Act. (s. 153)

Your position as an elected representative places you in a position of trust with corresponding duties. The Courts have held that the role of councillor is a fiduciary one that involves a duty of loyalty, utmost good faith and avoidance of any self-interest. What does this mean for you during your term on council?

- ✓ **You are to serve and represent everyone:** Not just your ward residents, or special interest groups;
- ✓ **You need to exercise balanced, sound judgement:** Not deliberately or consistently ignore public opinion, or alternatively, blindly follow public opinion;
- ✓ **You must come prepared:** Read everything. Review agenda packages in advance and come equipped to effectively participate in meetings;
- ✓ **You are a steward of scarce resources:** Provide financial oversight based on understanding municipal finances, adopting balanced budgets and matching service levels with available funding; and
- ✓ **You must comply with legislation:** Know your legal obligations and follow all relevant statutes, regulations, orders and directives.

Councillors have the right and the responsibility, unless in a pecuniary interest, to express themselves on all council issues. Councillors must vote unless required or permitted to abstain under the MGA or another enactment (s. 183). Effective councils are comprised of individual councillors that reflect the diversity of their community. Differences of opinion expressed through vigorous debate and individual votes are a cornerstone of democracy, although council

decisions are made collectively and reflect the will of the majority of the members present. It can be frustrating at times trying to garner support for your ideas from a majority of your council colleagues, but remember that municipal government is more of a marathon than a sprint.

Disagreement and debate is healthy; undermining Council's decision is not.

2.3. Chief Elected Official (Mayor/Reeve)

The chief elected official (often referred to by the title 'Mayor' or 'Reeve') is considered to be the voice of the council and the leader of the community. Often described as the "first among equals", the chief elected official has the same role and responsibilities as other councillors with a few additional responsibilities. This means that the chief elected official must vote on all questions called at a council or council committee meeting they attend (subject to being required or permitted to abstain from a vote by statute).

Under the MGA, the chief elected official is assigned the following additional duties:

- Presides at council meetings, unless a bylaw provides otherwise;
- Is a member of all council committees and bodies, unless council provides otherwise;
- Signs bylaws adopted by the council;
- Calls special council meetings;
- Signs agreements and cheques, unless another person is authorized by council to sign them; and
- Performs any other duties or functions imposed upon chief elected officials by the MGA or any other Act. (s. 154 and s. 213(3))

As the head of the council, the chief elected official:

- Attends ceremonies and social functions to advance and promote council objectives;
- Speaks publicly on behalf of council; and
- Is subject to the direction and control of council and must abide by council decisions

As presiding officer, the chief elected official:

- Ensures council meetings proceed in an orderly manner and that rules are not used to obstruct, delay or thwart council business;
- Must be familiar with council's procedure bylaw and apply rules consistently and fairly;
- Maintains decorum and may remove persons who are disrupting proceedings;
- Rules on whether motions and amendments are in order, subject to appeal to council;
- Votes on motions like other councillors; and

- Is subject to the direction and control of council and abides by council decisions.

2.4. Chief Administrative Officer (CAO)

If the council is the "decider" then the chief administrative officer (or "CAO") is the "doer". Council monitors the implementation of its decisions via reports by the CAO to council. The CAO is the most senior employee of the municipality and is the only member of staff selected and appointed by council. The CAO provides the link between the elected council and the municipality's employees. While all staff have a duty to carry out council decisions, they are responsible to the CAO, not the councillors. Individual councillors cannot direct staff in their day-to-day activities. However, this is counterbalanced by the responsibility of the CAO to provide information, guidance and support to councillors to make good decisions.

Council must by bylaw establish the position of chief administrative officer and council must appoint one or more persons to carry out the functions, powers and duties of the position of CAO (s. 205). Council may delegate certain functions to the CAO and the CAO may, in turn, delegate functions to other staff. However, the CAO retains responsibility to ensure that any sub-delegated function is carried out appropriately.

The chief administrative officer is responsible for the administration of the municipality and the person holding this position plays a vital role. In addition to any duties assigned to the CAO by council, the CAO has the following statutory powers, duties and responsibilities assigned by the MGA. The CAO:

- Is the administrative head of the municipality;
- Ensures that policies and programs of the municipality are implemented;
- Advises and informs the council on the operation and affairs of the municipality; and
- Performs the duties and functions and exercises the powers assigned to a chief administrative officer by the MGA, other legislation or assigned by Council. (s. 207)

In addition, the chief administrative officer must ensure that:

- The minutes of each council meeting are recorded in accordance with the MGA;
- All bylaws, minutes of council meetings and other records and documents of the municipality are kept safe;
- The Minister is sent a list of all the councillors and any other information the Minister requires within 5 days after the term of the councillor begins;
- The council is advised in writing of its legislative responsibilities under the MGA; and
- Any information the CAO provides to a councillor in response to a request for information is provided to all other councillors as soon as is practicable. (s. 208)

A strong relationship based on mutual trust and respect between the CAO and councillors is vital to a healthy and effective organization. Regular review of the CAO's performance establishes links between the council's and CAO's objectives and priorities and helps improve council's and the CAO's performance. By statute, council must (minimally) provide the CAO with an annual written performance evaluation (s. 205.1). A majority vote of the whole Council is required to make, suspend or revoke the appointment of a person to the position of CAO. (s. 206)

To be effective, the CAO should:

- ✓ Respect the role of council;
- ✓ Obey the direction of council regardless of disagreement or recommendations against the decisions, unless council is proceeding illegally;
- ✓ Provide council with the best information necessary to enable council to make decisions in the best interests of the municipality as a whole;
- ✓ Publicly support council decisions; and
- ✓ Remain neutral and provide unbiased direction to council.

To be effective, the council should:

- ✓ Respect the role of the CAO;
- ✓ Carefully consider the advice and recommendations put forward by the CAO prior to making decisions;
- ✓ Provide the CAO with clear direction and the necessary resources and support to effectively carry out council's decisions; and
- ✓ Publicly support the CAO and staff in administration.

2.5. Minister of Municipal Affairs

The Minister of Municipal Affairs, supported by the Department of Alberta Municipal Affairs, is responsible for overseeing municipalities and the administration of the MGA. The Minister has broad powers to require any matter connected with the management, administration or operation of any municipality to be inspected and to inquire into the conduct of individual councillors, councils, the chief administrative officer, or any employee or agent of a municipality. (s. 571 and 572)

If because of an inspection, a report of an official administrator, an inquiry, or an investigation by the Ombudsman or an audit, the Minister considers that a municipality is "managed in an irregular, improper or improvident manner" the Minister may, by order, direct the council, the chief administrative officer or a designated officer to take any action that the Minister considers proper. If an order is not carried out to the satisfaction of the Minister, the Minister may:

- Suspend the authority of council;
- Exercise bylaw-making authority;
- Withhold money otherwise payable by the Government to the municipality;

- Repeal, amend or make policies and procedures;
- Suspend the authority of the development authority or subdivision authority; or
- Dismiss council or any member of it or the chief administrative officer. (s. 574)

3. INTERMUNICIPAL COLLABORATION

The economic and budgetary policies of both the Federal and Provincial governments in recent years have generally resulted in more service responsibilities being left to local levels of government to handle, and with less financial assistance from the more senior levels. Increasingly, municipalities are faced with doing more for less and are looking to regional cooperation and regional economies of scale to provide sustainable service delivery. Longstanding arrangements already exist in relation to fire protection, waste management, recreation and water in many parts of the Province. Successful communities in the future will have to build on this record of cooperation to identify new opportunities for even greater services integration.

Effective regional collaboration balances the benefits and the burdens ensuring that there are no winners or losers.

Inter-municipal co-operation in the form of intermunicipal collaboration frameworks, inter-municipal development plans, and the agreements, services, ownership and governance to implement and maintain it all, are some of the key legislative reforms arising out of the MGA review process and will define the future roles, responsibilities and structures of municipalities in Alberta.

Municipalities will have two years from the coming into force of the amendment to negotiate and adopt intermunicipal collaboration frameworks and intermunicipal development plans with their neighbours (Part 17.2). Each framework must address how transportation, water and wastewater, solid waste, emergency services, recreation, and any other inter-municipal services are to be provided and funded. Implementation does not stop at agreement upon an inter-municipal collaboration framework. Clear plans and time frames for implementation of the resulting inter-municipal collaboration must be in place for each identified service.

Regional collaboration is successful when partners know and trust one another, build on past effort, and develop meaningful and effective governance models to provide oversight on shared approaches. Effective collaboration can reduce duplication of services, provide cost savings, access innovation, and enhance skills development.

Trust is earned; it cannot be manufactured or forced. Trust is based on relationship and must be fostered and reinforced.

4. CONDUCTING COUNCIL BUSINESS

4.1. Valid Action

A council may **only** act by resolution or bylaw passed at a duly constituted public meeting with a quorum present. Where legislation requires or authorizes a council to do something by bylaw, it may only be done by bylaw. If an enactment is not specific about how a council may act, the council may act by resolution or by bylaw. (s. 180)

Bylaws are more formal than resolutions (three distinct votes are required to pass a bylaw) and are appropriate where the council wishes to address matters that will affect the public, such as regulating private property standards or municipal public utility services. Resolutions are typically reserved for the business or administrative activities of the council and only require a single vote to pass. Resolutions are appropriate for addressing single events/issues, expressing council's position on a matter and providing direction to the CAO.

The MGA sets out a number of stipulations in relation to council proceedings; including voting requirements, procedures for passing a bylaw, scheduling and providing notice of meetings and rights of the public to be present (s. 192-199). Beyond these basic statutory requirements, a council may pass bylaws in relation to the procedure and conduct of council, council committees and other bodies established by the council (s. 145). A well-drafted council procedure bylaw forms part of the foundation upon which good governance is built. Formally adopted meeting procedure rules greatly enhance the efficacy and efficiency of council proceeding by providing procedural certainty and consistency and clarifying council's expectations for the conduct of its members and the public during proceedings. At a minimum, rules should be adopted to govern the following:

- Organizational meetings
- Regular meeting schedule
- Notice provisions
- Agenda development
- Regular agenda format
- Recording of meetings
- Chairperson's powers
- Precedence of motions
- Points of order and privilege
- Rules of debate
- Voting procedures
- Public participation and delegations
- Councillor inquiries and notices of motion
- Public hearings
- Adjournment

Councils may elect whether and to what extent their meetings will be governed by an authoritative text on parliamentary procedure, such as Roberts Rules of Order Newly Revised. The level of procedural complexity and formality of council proceedings should reflect the relative size and complexity of the council and municipality the rules are intended to serve. For example, a council of three serving a village may conduct its meetings less formally than a council of fifteen members serving a major metropolitan city, provided that minimum statutory requirements are adhered to.

4.2. Meetings

Council business must be conducted in a duly constituted council meeting. Three types of council meetings are recognized by the MGA: (a) organizational meetings, (b) regular council meetings, and (c) special council meetings. Councillors must refrain from gathering to deliberate and decide upon matters within council's jurisdiction outside of a properly constituted meeting.

Council has the obligation to hold an organizational meeting annually not later than two weeks after the third Monday in October (s. 192). Typically, the agenda of an organizational meeting will, as the name implies, be limited to addressing organizational items such as meeting schedules, councillor seating arrangements and committee appointments. At the inaugural organizational meeting at the start of the council term each councillor must take the oath of office.

Regular council meetings are the bread and butter of council business (s. 193). Depending on the relative size and complexity of the municipality, regular council meetings may be held on a monthly, bi-weekly or even weekly basis. If council has established a schedule of regular council meetings on specified dates, times and places then notice of regularly scheduled meetings need not be given to the public.

Additionally, a special council meeting may be called for a specific purpose or matter which cannot wait until the next regular scheduled meeting (s. 194). The chief elected official may call a special meeting whenever they consider it is appropriate to do so and **must** call a special meeting if he or she receives a written request for a meeting, from a majority of the councillors, stating the purpose of the special meeting. If a chief elected official receives a request for a special meeting, it must be held within 14 days of the receipt of the request (or a shorter time frame if a bylaw so provides).

If the chief elected official calls a special council meeting at his or her own request then 24 hours' notice in writing must be given to each councillor and to the public detailing the date, time and place, and purpose of the special meeting. A special council meeting may be held with less than 24 hours' notice, and without notice to the public, if two-thirds of the whole council agree to it in writing.

At a special council meeting, no matters other than the ones detailed in the notice relating to the special meeting may be dealt with by council *unless* the whole council is present at the special meeting, and agrees to deal with an additional or other matter.

In addition to council meeting requirements, the MGA also addresses council committee meetings. A council committee meeting requires that 24 hours' notice of the meeting be given to members of the committee and the public (s. 195).

4.3. Public Meetings and In Camera Proceedings

In general, councils and council committees must conduct their meetings in public (s. 197). As the Supreme Court of Canada has held "[t]he democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law."¹ However, legislation does provide councils and council committees with specific authority to close proceedings to the public and move in camera (Latin for "in chambers") to discuss matters within one of the exceptions to disclosure under the *Freedom of Information and Protection of Privacy Act* (FOIP) or a regulation passed pursuant to the MGA. In camera meetings serve a legitimate purpose and are an important aspect of meeting procedure that protects the municipality, the business interests of third parties and the personal privacy of individuals (among other things) by ensuring sensitive discussions are kept confidential.

Prior to moving in camera, a council or council committee must, by resolution, approve the agenda of the part of the meeting that is to be closed and identify the basis on which the meeting is to be closed (by reference to the specific exception to disclosure under FOIP or the regulation).

Recognized FOIP exceptions for closing a meeting to the public and moving in camera include:

- ✓ Business interests of a third party (s. 16)
- ✓ Personal privacy (s. 17)
- ✓ Individual or public safety (s.18)
- ✓ Confidential evaluations (s. 19)
- ✓ Law enforcement (s. 20)
- ✓ Intergovernmental relations (s. 21)
- ✓ Local public body confidences (s. 23)
- ✓ Advice from officials (s. 24)
- ✓ Economic interests of the public body (s. 25)
- ✓ Testing procedures, tests and audits (s. 26)
- ✓ Privileged information (s. 27)
- ✓ Conservation of heritage sites (s. 28)
- ✓ Information that will be published or released within 60 days (s.29)

Subject to the exceptions above, the public has the right to be present at council or council committee meetings, unless a person is expelled for improper conduct (s. 198). The right of the public to attend meetings allows the public to observe 'council in action', but does not extend to allowing the public to participate in the meeting by speaking or distracting the meeting in any way. Public participation at council meetings (discussed further below) may take the form of presentations or delegations to council.

If Council decides to close a meeting to the public, the only resolution that can be passed is a resolution to revert back to a meeting held in public. No other resolutions or bylaws can be passed in a closed meeting. (s. 197(3))

The CAO attends council meetings, but council may resolve to exclude the CAO if it is dealing with matters related to the CAO's employment or performance.

4.4. Motions and Resolutions

The terms 'motion' and 'resolution' are often used interchangeably by councils, although they are distinct concepts in parliamentary procedure. The distinction relates to the stage of the process with the motion equivalent to a proposal for action and the resolution to the formal expression of the will of the group in relation to the motion. In the context of a council meeting, a councillor makes a motion by saying "I move that" and stating the proposed action. The motion becomes a resolution through the process of debate, voting and approval by majority consent. If a motion is approved by council, the resolution is adopted and recorded verbatim in the minutes of the meeting. This handbook uses the term 'motion' when speaking of matters moved and seconded (if required by the council's procedure bylaw) before council but not yet voted on and 'resolution' for those matters where a motion has been presented and approved by council.

A well-crafted motion is:

1. **Specific:** a clear motion will reduce time spent in discussion and making amendments and will ensure your motion (if passed) is carried out as you intended.
2. **Concise:** avoid using unnecessary verbiage or proposing multiple actions in a single motion that may result in a call to divide the question.
3. **Positive:** a motion should be phrased as a positive action, whenever possible. If you do not want to do something then no motion is required. While negative motions may serve a valid purpose, they can lead to confusion.

Properly wording a motion is the responsibility of the councillor moving the motion not the recording secretary.

¹ *RSJ Holdings Inc. v. London (City)*, [2007] 2 SCR 588 at para. 38

Types of Motions:

1. **Main Motion:** an item you want to introduce to council to consider and vote on. Main motions yield to privileged, subsidiary and incidental motions.
2. **Subsidiary Motion:** a motion to change or affect how a main motion is handled. Council must vote on the subsidiary motion before they vote on the main motion (e.g. a motion to refer the action in the main motion to a committee for further review).
3. **Privileged Motion:** a motion to raise an urgent or important matter unrelated to pending business. (e.g. a motion to delay a main motion until after a recess).
4. **Incidental Motions:** a miscellaneous motion to question or clarify the procedure relative to other motions.

4.5. Voting

The primary method by which individual councillors contribute to developing and evaluating policies and programs of the municipality and representing their constituents is by expressing opinions in debate and voting on motions before council. Every councillor, including the chief elected official, has one equally weighted vote on every matter put before the council (s. 182). By statute, all councillors **must vote** on every matter put to a vote at a meeting where they are in attendance unless the councillor is required or permitted to abstain in accordance with the MGA. (s. 183)

Where a councillor abstains from voting, the reasons for abstaining and the abstention itself must be recorded in the meeting minutes (s. 184). A councillor must abstain from voting where the councillor has a pecuniary (i.e. financial) interest in a matter or if they were absent for all of the public hearing relating to the proposed bylaw or resolution. A councillor, however, does have the discretion to vote on a bylaw or resolution if he or she was absent for only a part of the public hearings on a bylaw or resolution.

A simple majority suffices to pass most motions with the exception of those requiring a two-thirds majority (e.g. a motion to suspend a procedural rule during proceedings) or a majority vote of the whole council. (e.g. a motion to appoint an individual to the position of CAO). A motion is defeated on a tie vote. (s. 186)

4.6. Recorded Votes

Any councillor may request that the vote on a particular matter be recorded. The request for a recorded vote must be made **before** the vote is taken (s. 185). If such a request is made, the minutes must include the names of the councillors who were present and how each of those councillors voted on the matter. Recorded votes should be used sparingly for legitimate purposes to officially record how individual councillors voted on a matter. For example, it may be prudent to request a recorded vote on a matter a councillor believes could expose individual councillors to personal liability. However, frequent calls for recorded votes to serve personal political purposes are not appropriate.

4.7. Minutes

Minutes are an accurate record of what was decided at council meetings. Clear and unambiguous minutes allow councillors (and the public) to see what was done in the past and to avoid passing conflicting resolutions. The MGA requires that minutes be recorded in English, **without note or comment** (s. 208(1)(c)). Minutes should never be a verbatim reproduction or summary of the discussions at council, but rather a record of decisions of council, voting and attendance.

4.8. Bylaws

Council may pass bylaws for municipal purposes respecting the following matters:

- The safety, health and welfare of people;
- The protection of people and property;
- People, activities and things in, on or near a public place or place that is open to the public;
- Nuisances, including unsightly property;
- Transport and transportation systems;
- Services provided by the municipality;
- Businesses, business activities and persons engaged in business;
- Services provided by or on behalf of the municipality;
- Public utilities;
- Wild and domestic animals and activities in relation to them; and
- The enforcement of bylaws (s. 7)

In exercising these bylaw making powers, a municipality may regulate or prohibit, deal with any development, activity, industry, business or thing in different ways by dividing each category into classes and dealing with each class in a different way and may provide for a system of licences, permits or approvals (s. 8). If there is an inconsistency between a bylaw and a provincial statute, the provincial statute overrules the bylaw. (s. 13)

A bylaw of a municipality only applies within the boundaries of the municipality. The only exceptions to this rule are when one municipality agrees with another municipality that the bylaw has effect within the boundaries of the other municipality and the council of each municipality has passed a bylaw approving the agreement or the MGA or another enactment says that the bylaw applies outside the boundaries of the municipality. (s. 12)

Every proposed bylaw must have 3 distinct and separate readings. At the meeting where first reading of a bylaw is made, councillors must be given or have had the opportunity to review the full text of the proposed bylaw before first reading is received. Similarly, at the third reading stage, councillors are again to have had or to be given the opportunity to review the full text of the proposed bylaw. No proposed bylaw may have more than 2 readings at a council meeting unless the councillors present unanimously agree to consider third reading. (s. 187)

If a proposed bylaw does not receive third reading within 2 years after first reading, or is defeated on second or third reading, the previous readings of the proposed bylaw are rescinded. (s. 188)

A bylaw is passed when it receives third reading and it is duly signed (s. 189) and comes into force at the beginning of the day it is passed unless otherwise provided in the MGA, another enactment or in the bylaw. A bylaw cannot take effect retroactively unless specifically authorized by statute. (s. 190)

Bylaws may only be amended or repealed by a bylaw passed in the same manner in which the original bylaw was passed, unless the MGA or another enactment provides otherwise.

5. PUBLIC PARTICIPATION

Municipal government follows a system of *representative* democracy where elected councillors represent the citizenry. This is in contrast to a *participatory* or *direct* democracy, where all citizens are actively involved in the decision making process, for example through regular referendum votes the results of which are binding on council.

Although councillors are elected representatives of the community, it is important that the community be able to engage with council to discuss and contribute their views and ideas. Effective community engagement assists council to understand and incorporate the public will and community concerns into decision making. Certain participatory rights to not only observe but also actively participate in council decision making are guaranteed by statute.

When a council is developing its Land Use Bylaw or a statutory plan, for example, it is required by law to advertise and hold a public hearing to consider all the comments or submissions received by the public prior to adopting the bylaw (s. 606 and 672). At a statutory public hearing the council must hear any person, group of persons, or person representing them, who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and may hear any other person who wishes to make representations and whom the council agrees to hear. (s. 230)

Under Part 7 of the MGA, the local electorate is empowered to petition the council for a new bylaw or to amend or repeal an existing bylaw or resolution on any matter within the jurisdiction of the council, subject to a few limitations (s. 219-240). A council may also be petitioned to hold a public meeting, for a public vote on an advertised bylaw or resolution or for a local improvement. In order to be sufficient, a petition must be signed by electors equal in number to at least 10% of the municipal population.

The MGA further mandates that every council adopt a public participation policy that identifies how and when the municipality will engage with municipal stakeholders (s. 216.1). Public participation in local government may take many forms, including:

- Polls/surveys
- Social media dialogue/feedback
- Open houses
- Community roundtable discussions
- Non-statutory public hearings

Good community engagement involves a two-way flow of information. Councils need to be open and transparent, actively listen to all stakeholders, and allocate sufficient time to the process to ensure legitimacy. To be effective, council should also provide clear feedback to the community on the outcomes of any engagement activities.

6. BUDGETING AND FINANCIAL MANAGEMENT

Raising revenue and allocating funds are core functions of a council. Municipalities need revenue to operate, and the services provided are directly related to the revenues raised. As the trustees of municipal funds, councillors are responsible to the community to ensure money is spent prudently and efficiently and taxes are collected. In order to keep within budget, council must track expenditures and make choices about priorities. Every councillor should be able to understand the budget process and financial statements in order to monitor the municipality's financial position, but councillors are not expected to be accountants. Councillors rely on the CAO and staff in administration as well as the municipality's auditors for financial information and advice but ultimately the council is responsible for the municipality's financial affairs.

Only a council may adopt a budget (s. 242). Otherwise, council has considerable freedom to delegate authority to the CAO in respect to financial matters. A municipality may only make expenditures that are budgeted expenditures or that fall within the following categories of unbudgeted expenditures:

- Expenditures otherwise authorized by council;
- Emergency expenditures; or
- Expenditures that are legal required to be paid. (s. 248)

Council must establish procedures to address authorization and verification of unbudgeted expenditures.

Budget Basics

- ✓ **Be realistic.** Under-estimating expenses and over-estimating revenue in order to avoid a tax increase is not good governance. A realistic budget is built upon the actual revenues and expenditures of previous years, although changed circumstances and programs may make adjustments necessary.

- ✓ **Be efficient.** Look for ways to provide services more efficiently. Regional service delivery can spread the cost of service among two or more benefitting municipalities. Effective public procurement practises, including bulk purchases of supplies, or joint purchases with neighboring municipalities may also lower cost.
- ✓ **Be vigilant.** Live within Council's means. A realistic budget is of little value if it is ignored in practice. Diligently review monthly statement of revenue and expenses and watch for warning signs of over spending or growing accounts receivable and take decisive corrective action.

Municipal revenue falls into two broad categories: locally raised revenue and grants from other orders of government.

Types of Local Revenue

Taxes

Property tax
Business tax
Business improvement area tax
Community revitalization levy
Special tax
Well drilling equipment tax
Local improvement tax
Community aggregate levy

Permit/User Fees and Charges

Development permits
Building permits
Business license
Recreation centre admission
Tipping fees (solid waste)
Water and sewer charges

Provincial/Federal Transfers

Grants (Provincial/Federal)

Conditional grants
Unconditional grants

Additionally, a council may invest money in limited types of securities authorized by the MGA. (s. 250)

7. CODE OF CONDUCT AND ETHICS

Councillors owe fiduciary duties to the municipalities and the people they were elected to serve. The community rightly expects the highest standards of conduct of those they elect to council. A councillor's failure to comply with these standards can undermine community confidence in council and the municipal government sector as a whole. Acting ethically is about more than simply managing pecuniary interests. Ethical conduct applies to the interactions of councillors with municipal staff, members of the public, use of resources and any personal benefits councillors might obtain by virtue of their office. For this reason, councillors are obliged to comply with prescribed ethical and behavioural standards in the performance of their role.

The MGA mandates that every council adopt a code of conduct bylaw to apply equally to all members of the council (s. 146.1). A comprehensive code of conduct bylaw ensures that councillors share a common basis and understanding for acceptable conduct extending beyond the legislative provisions governing the conduct of councillors. At a minimum, a code of conduct must address the following topics:

- (a) Representing the municipality;
- (b) Communicating on behalf of the municipality
- (c) Respecting the decision-making process;
- (d) Adherence to policies, procedures and bylaws;
- (e) Respectful interactions with councillors, staff, the public and others;
- (f) Confidential information;
- (g) Conflicts of interest;
- (h) Improper use of influence;
- (i) Use of municipal assets and services; and
- (j) Orientation and other training attendance.

A councillor who breaches the code of conduct may face disciplinary action. The MGA authorizes a council to impose specific sanctions in response to a breach of the council's code of conduct, including:

- (a) A letter of reprimand;
- (b) Requesting a letter of apology;
- (c) Publication of a letter of reprimand or request for apology and the councillor's response;
- (d) A requirement to attend training;
- (e) Suspension or removal of the appointment of a councillor as the chief elected official, deputy chief elected official or acting chief elected official;
- (f) Suspension or removal of the chief elected official's presiding duties;
- (g) Suspension or removal from some or all council committees and bodies to which council has the right to appoint members;
- (h) Reduction or suspension of remuneration, corresponding to a reduction in duties, excluding allowances for attendance at council meetings.

A council does not have the authority to remove a councillor from office; only a court of competent jurisdiction or the Minister of Municipal Affairs can do so. A council cannot suspend a councillor from holding office or generally prohibit a councillor from attending and participating in council meetings; a councillor must be able to retain sufficient access to information and services so as to be able to continue to carry out his or her duties as a councillor while in office. Principles of natural justice and procedural fairness apply to councillor sanctions for a breach of the conduct of conduct. Prior to imposing any sanction, council should provide the councillor with due process, including fair notice as to the nature of the alleged contravention of the code and the potential sanction, as well as a right to be heard.

The role of councillor is a public one. Councillors need to act at all times in a way that does not bring disrepute to either themselves or their council.

8. PECUNIARY INTERESTS

Councillors have a duty to act in the best interests of the community as a whole and not for their own personal interests. By law, councillors are required to declare any pecuniary (i.e. financial) interest they may have in a matter and not participate in any discussion and decision on the matter (s. 169-174). The goal of the pecuniary interest rules is to ensure that a councillor's vote is not influenced by any personal financial interest.

Pecuniary interests arise where councillors, or certain persons or entities they are associated with, including family members and employers, are reasonable likely to make or lose money because of a decision council might make. In such a case the MGA requires the councillor to declare the interest and physically leave the meeting while the matter is being debated and voted on. The pecuniary interest rules apply each and every time a matter comes before council, a council committee, or any other body to which the councillor is appointed as a representative of the council.

A breach of the pecuniary interest rules may result in a councillor's disqualification from office. The test applied by the courts in determining if a councillor has a pecuniary interest is an objective test. It does not matter whether the particular councillor's judgment is in fact affected by their personal financial interest; rather, the test is whether a reasonable elector would conclude that the councillor's judgment *could* be affected by their personal financial interest.

You are responsible for declaring any pecuniary interest you or your family may have.

8.1. Who is a councillor's family?

"Councillor's family" is defined under the MGA to include the councillor's:

- Spouse or partner
- Children
- Parents
- In-laws

but does not include a councillor's siblings. (s. 169(b))

8.2. Exceptions to the Pecuniary Interest Rules

The MGA sets out a number of exceptions to the pecuniary interest rules for circumstances that could monetarily affect a councillor but are deemed not to be a pecuniary interest for the purposes of the legislation (s. 170(3)). For example, a councillor does not have a pecuniary interest by reason only of any interest that the councillor or a member of the councillor's family may have by being a member or director of a non-profit organization or a service club

8.3. Bias

A pecuniary interest is a form of bias, but not all matters of bias are financial in nature. Bias addresses the concepts of natural justice and procedural fairness in the conduct of a councillor fulfilling his or her obligations to the public, whether acting in a legislative or quasi-judicial capacity. A bias is anything that affects the councillor's ability to objectively consider the merits of a matter. Not to be confused with political bias (i.e. left, right or centre political leanings), bias can be a situation where a councillor's association with a party or personal hostility towards a party can influence the member to vote in a certain way. While a non-pecuniary bias will not disqualify a councillor from holding office, it can result in a challenge to the validity of the individual's vote or an action of the council, such as a bylaw, resolution or contract.

When acting in a **legislative capacity** (e.g. passing a bylaw of general application) a councillor must maintain what the courts refer to as "an open mind that is capable of persuasion". It is well established that a councillor is free to express views and take a stand on a particular issue. However, if a councillor has prejudged a matter to such an extent that he or she has unalterably made up their mind before considering all of the available information, a councillor is said to have a "closed mind" and their vote and council's decision could be successfully challenged. If a "closed mind" exists, the councillor must recuse him or herself from hearing and voting on the matter.

When council acts as a **quasi-judicial body** and decides disputes affecting the rights and interests of individuals (e.g. a bylaw enforcement order review), fairness concerns are heightened and the law requires a higher standard for councillors to be unbiased. The legal test is whether a reasonable person properly informed would be more likely to think that the decision of the councillor could be affected by a conscious or unconscious bias on the part of the councillor. The test is an objective one; it is not whether the decision was actually affected by, for example, the councillor's relationship to one of the parties. If a reasonable apprehension of bias exists, a councillor must recuse him or herself from hearing and deciding the matter.

9. PERSONAL LIABILITY OF COUNCILLORS

9.1. Protection from Liability

Municipalities are corporations and can sue and be sued. A municipality may be held liable for actions carried out negligently that result in damage or injury to persons or property. The MGA provides councillors with a level of protection from civil liability for undertaking council related and council endorsed activities as a councillor. A councillor will not incur personal liability where the act complained of was done in "good faith" (i.e. honestly) in the course of carrying out the councillor's powers and duties. **However, this statutory protection from personal liability does not apply if the cause of action is defamation.** (s. 535)

Where a councillor steps outside the scope of his or her duties and obligations, or omits to fulfill his or her duties, the councillor may be held personally liable for the resulting damage. Specific areas that may result in councillor **personal liability** include the following:

- A councillor who improperly uses information obtained through being on council to gain a pecuniary benefit, can be ordered to pay the sum of damages that a judge determines appropriate.
- A Councillor who makes an expenditure that is not authorized by council is liable to the municipality for the monies so spent.
- A Councillor who votes to spend money that has been obtained under a borrowing or grant on something that is not within the purpose of the borrowing or grant is liable to the municipality for the expenditure of the money so spent.
- A Councillor who votes in favour of a bylaw authorizing borrowing, lending or the guaranteeing of monies which causes the municipality to exceed its regulated debt limits can be held liable for the amount borrowed. (s. 275)

APPENDIX 1

Hallmarks of an Ethical Councillor

The ethical councillor:

- ✓ **Acts honestly, in good faith, and in the best interests of the municipality as a whole.**
- ✓ **Knows and obeys not only the letter but also the spirit and intent of the law,**
- ✓ **Knows their role and "stays within their lane" thereby respecting the roles held by others.**
- ✓ **Conducts him or herself with decorum.**
- ✓ **Communicates honestly and earnestly, but does not engage in personal attacks on other councillors, staff or the public.**
- ✓ **Only uses the influence of their office to carry out their official duties.**
- ✓ **Is free from undue influence and does not request nor accept gifts or other favours in exchange for any favour.**
- ✓ **Respects the privacy of others and keeps in confidence any confidential information the councillor is privy to.**

NOTES

