Local Government Resource Handbook

Guide to the Municipal Government Act

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Contents

OVERVIEW 5
MUNICIPAL LEGISLATIVE FRAMEWORK 7
Government powers 8
Bylaws 8
Corporate powers 9
ROLE OF COUNCIL 10
Council 11
Composition 11
Duties and Responsibilities 12
The Mayor 13
The Deputy Mayor 13
The Acting Mayor 13
Paying Council 13
Council Compensation 14
Allowable Expenses 14
Accepting Gifts 15
ROLE OF ADMINISTRATION 16
Administrative Services - Office and Communication 17
Chief Administrative Officer (CAO) 17
Duties of the CAO 18
Council Expectations 19
Council as Employer 19
Employee Code of Conduct 19
MAKING DECISIONS 21
Bylaws 22
Process for Making Bylaws 23
Mandatory Bylaws 24
Service-dependent Bylaws 24
Resolutions 24
Policies and Fair Decision-Making 25
GETTING DOWN TO BUSINESS 27

Municipal Procedures 28
Procedural Bylaw 29
Calculating Notice for Meetings 30
MANAGING MEETINGS 32
Regular Meetings 33
Special Meetings 33
Emergency Meetings 34
Closed Meetings 34
Closed Meeting Scenarios 35
Electronic Meetings 36
Quorum 37
Meeting Agenda 38
Voting 38
Meeting Minutes 38
Records 39
Municipal Committees 39
Committee Meetings 40
CONFLICT OF INTEREST 42
Types of Conflict of Interest 43
General examples 44
Common examples of conflict situations at the municipal level 44
Dealing with Conflict of Interest 44
Complaints 45
Right to be heard 46
Other Considerations 46
Bias 46
Breach of Fiduciary Duty 46
Protection 47
Code of Conduct Bylaw 47
PUBLIC ENGAGEMENT 48
Requirement for Public Input – MGA 49
Requirement for Public Input – *Planning Act* 50
Plebiscites 50

Financial Plan (Budget) Meeting 50
Your Role 50
Encouraging Attendance 51
COUNCIL'S ROLE IN FINANCIAL MANAGEMENT 52
Internal Controls 53
Annual Financial Plan (Budget) 54
Components of the Financial Plan 55
Managing Capital Assets 56
Critical Budget Decisions 57
Taxation 58
Timelines for Creating or Changing Tax Rate Groups 58
User Fees and Charges 59
Other Forms of Revenue 59
Tourism Accommodation Levy 59
Local Improvements 59
Ancillary Products and Services 59
Capital Projects and Borrowing 60
Monitoring Municipal Finances 61
Annual Financial Reporting 61
Grants and Other Assistance 62
SERVICE DELIVERY AND BYLAW ENFORCEMENT 64
Bylaw Enforcement 65
Open Government 65
Protection of Privacy 66
CITIZEN CONCERNS 67
Complaints to the Province 68
Courts 68
ELECTIONS 69
Term of Office 70
Election Processes 70
Campaign Contributions and Election Expenses 71
What are the requirements for candidates? 71
Vacancies on Council 72

Council's Role during the Election Process 72
MAKING THE MOST OF YOUR TIME ON COUNCIL 74
APPENDIX 1- The *Municipal Government Act* (MGA) at a Glance 76
APPENDIX 2 - Overview of the *Municipal Government Act* 80
APPENDIX 3 - KEY RESOURCES FOR COUNCIL MEMBERS 82
Municipal Resources 82
Government of Prince Edward Island Resources 82
Federation of Prince Edward Island Municipalities Resources 82
APPENDIX 4 – Significant Dates 83
Notes 84
Notes 85
Notes 86

OVERVIEW

OVERVIEW

You have accepted an important responsibility in making the decision to put your name forward to sit on council. As an elected local government, your council will be charting the course of your municipality into the future. You will be making decisions that affect every citizen, business, and property owner in the municipality. As a council member, you are a community leader.

The purposes of a municipal council are to: [1]

- provide good government
- provide services, facilities or other things that a council considers necessary or desirable for the municipality
- provide stewardship of municipal public assets
- develop and maintain the municipality as a safe and viable place
- encourage and enable public participation in matters that affect the municipality

Considerable trust has been placed in you, along with the other members of council, to govern the municipality objectively, fairly, transparently, and most importantly, with the public's best interest in mind. As a council member, you will have many exciting, challenging and rewarding experiences.

This guide has been prepared by the Municipal Affairs Division of the Prince Edward Island Department of Fisheries and Communities as a resource for your local government.

The guide provides a brief overview of what you will encounter or need to know during your term of office, such as the roles of council and administration, conflict of interest, public participation in municipal decision-making and council's role in financial management. It also provides you with helpful tips to assist you to make a positive and lasting contribution to your municipality.

The Department of Fisheries and Communities wishes you every success in the important role of a member of a municipal council.

This document has been created by Municipal Affairs staff. It is general information only and not as legal advice for any specific factual situation. If you are unsure whether this information applies to your particular situation, you should consult a lawyer. In the case of any inconsistency between the information presented here and any Act or Regulation, the Act or Regulation prevails.

[1] Section 3 of the Municipal Government Act (MGA)

MUNICIPAL LEGISLATIVE FRAMEWORK

MUNICIPAL LEGISLATIVE FRAMEWORK

Municipalities are responsible and accountable local governments, created, enabled and regulated by the Province of Prince Edward Island. The *Municipal Government Act* (the MGA), in addition to other pieces of legislation, provides a framework for municipal governance and administration of the municipality.

In PEI, there are three classes of municipalities: cities, towns and rural municipalities.

Municipal councils have the autonomy to manage their own affairs and to make decisions that the council thinks will best meet the needs of their residents, within the parameters established in the legislation. In other words, municipalities have flexibility in how they operate, but must follow the standards in the Act and regulations.

In Prince Edward Island, municipalities are required to deliver the following services: administration (with an accessible public office open 20 hours a week by 2022), fire protection, emergency measures planning (by 2021), and land use planning (by 2023). Please note that the deadlines for emergency measures planning and land use planning were both extended by Ministerial Order in September of 2020. The original deadlines can be found in Section 14 of the MGA.

Municipalities can choose to deliver a wide and varied range of other services that are not required by legislation, such as parks and recreation, municipal utilities (as a municipal department or a controlled corporation) or economic development, within the municipality's legislative authority. The provision of these services reflects each municipality's own local priorities.

The Act gives municipalities certain powers or authorities to deliver municipal services.

Government powers

Municipalities have powers that are available only to governments. These are significant powers because they have a direct impact on citizens and property owners. These powers include, among other things, the authority to tax, regulate, and expropriate land for municipal purposes.

Bylaws

The regulatory authority includes the ability to make laws, known as bylaws, in the municipality. Bylaws can regulate the behaviour of individuals, establish local standards or control the use of private property. Examples include land use planning bylaws, noise bylaws, animal control bylaws and unsightly property bylaws. The municipality has the authority and the responsibility to enforce its bylaws.

Corporate powers

The municipality, as a local government, has corporate status through the MGA and has powers similar to other types of corporations.

These powers include, among other things, the authority to buy and sell land, to buy equipment, to enter into agreements for services, or to tender work. These powers are bestowed on municipalities through the MGA and the *Interpretation Act*.

The autonomy and independence afforded to municipalities under the MGA is balanced with requirements for transparency and public accountability. This balance recognizes that municipalities are accountable to their citizens first and foremost, in addition to the provincial government.

Remember!

- ✓ Municipal councils are elected governments, accountable to their citizens
- ✓ Councils have significant government and corporate powers – USE THEM WISELY
- ✓ Council will be effective when roles are understood and legal authority is properly exercised

ROLE OF COUNCIL

ROLE OF COUNCIL

Council is elected by the residents of a municipality to make decisions for the municipality regarding services, policies, and programs. Councils are responsible for developing and evaluating policies that direct recreation, planning, financing and other municipal services.

The council must make decisions that are in the best interests of the municipality as a whole. Individual council members elected on a ward basis must consider the needs of the entire municipality and not only the needs of the ward through which they were elected.

Each council member has an equal voice at the council table; every council member, except the mayor, has one vote.[2] A simple majority vote is required to make most council decisions. The mayor, however, only votes to break a tie.[3]

The council as a whole is the governing body of the municipality and, as such, a council decision is the decision of the municipality. All council members must respect the decision of council even when they did not vote in favour on a particular matter.

The council can, by bylaw (and in accordance with the MGA, regulations and other bylaws), delegate specific powers, duties or functions to a council committee or the CAO.[4]

There are specific council duties and powers, however, that cannot be delegated, including passing bylaws and resolutions, appointing or revoking the CAO, the duty to hold a public meeting, and the duty to hear and decide appeals.

Individual council members have no authority to make any decisions on behalf of the municipality. If they do act without council endorsement, they can be held financially or legally liable.

Council

Composition

Council sizes were standardized with the 2018 municipal elections. Towns and rural municipalities have a mayor and six councillors. Cities have a mayor and eight councillors.[5]

The council must pass a bylaw if they want to increase the size of council.[6] Cities may opt to have a mayor and ten councillors, while towns and rural municipalities can have a mayor and 8 councillors.[7]

A council may, by bylaw, divide a municipality into wards and provide that the members of council (except the mayor) are to be elected on a ward basis.[8] Where a council has not divided the municipality into wards, council members are elected at large.[9]

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[2] Section 115 of the MGA
[3] Subsection 115.(4) of the MGA
[4] Section 88 of the MGA
[5] Clauses 78.(1)(a) and 78.(3)(a) of the MGA
[6] Subsection 78.(4) of the MGA
[7] Clauses 78.(1)(b) and 78.(3)(b) of the MGA

Duties and Responsibilities

The MGA provides councils with broad authority, and clarifies the duties and responsibilities of council.[10]

The duties of council:

- Carrying out the duties and functions specifically outlined in the MGA or another Act
- Developing policies for services and programs
- Evaluating services and programs on a regular basis
- Appointing, directing and managing the chief administrative officer (CAO)
- Revoking or suspending the CAO's appointment if required
- Participating in, and voting at, council meetings, committee meetings, and on other bodies to which a councillor may be appointed
- Exercising the powers of council or the municipality by passing bylaws or resolutions
- Establishing a procedural bylaw
- Establishing a code of conduct for council members by bylaw
- Establishing a code of conduct for employees that includes conflict of interest rules
- Ensuring the powers of the municipality and council are used appropriately and that their duties and functions are carried out

Council is accountable to the public for the decisions it makes. Council is also responsible for ensuring that the municipality operates in an open and transparent manner while respecting confidentiality and privacy requirements.

The council is responsible for ensuring the municipality operates within its enabling legislation. The municipality can be taken to court if it acts outside its legal authority. The legislation establishes minimum requirements – the council can establish additional procedures and processes, if they act within their legislative authority.

Individual members of council have a duty to be prepared and informed on matters before council, to attend meetings, and to vote on decisions before council.

The council does not actively carry out the day-to-day administration of the municipality – this happens through the CAO, who implements the policies and directives of council. The CAO is responsible for any and all municipal employees and contractors hired or persons or firms retained by the municipality to work on behalf of council.[11] Neither council nor individual councillors may provide direction to municipal staff other than the CAO.

Council members may not undertake any duties normally undertaken by a municipal employee or an employee of a controlled corporation.[12]

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[8] Clause 38.(1)(a) of the MGA
[9] Subsection 39.(3) of the MGA
[10] Subsection 86.(2) and 107.(1) of the MGA
[11] Clause 93.(1)(d) and 93.1(d.1) of the MGA
[12] Subsection 92(2) of the MGA

The Mayor

All councils have a head of council, the mayor. The mayor is often the main spokesperson for the municipality when expressing the municipality's position to the media or the public, and when attending community events.

The mayor's responsibilities include:

- Providing leadership to Council and the CAO
- Presiding at council meetings and maintaining order and decorum, deciding on questions of order at meetings
- Casting the deciding vote when there is a tie for and against a bylaw or resolution
- Appointing a deputy mayor
- Signing council meeting minutes and bylaws
- Acting as one of two signing authorities for the municipality
- Performing the duties of a member of council
- Performing other duties or functions required under the MGA or assigned by the council

The mayor also has all of the duties of a regular council member. In addition, by virtue of the mayor's office, they are a member of every committee established by the council or mayor. They have the right to vote but shall not be counted for the purpose of determining quorum when they are in attendance.[13]

The Deputy Mayor

The mayor appoints a deputy mayor from among the other members of council.[14] The role of the deputy mayor is to fulfil the duties of a regular council member, and carry out the duties of the mayor if the mayor is absent or incapacitated.

The deputy mayor remains in this role until the appointment is withdrawn or the person is no longer a member of council.

The Acting Mayor

A council may appoint an acting mayor from its members if the mayor and deputy mayor are unavailable and neither have appointed another member of council to act in their place, or if the office of the mayor and deputy mayor are vacant.[15] The councillor appointed as acting mayor remains in the position until the mayor or deputy mayor is available or a new mayor is elected.

Paying Council

Council has the authority to set its own compensation (often called an honorarium or remuneration), but must do so by bylaw.[16] Council compensation is almost always a sensitive topic and typically generates much public interest. The municipality can avoid negative public

[13] Section 89, section 90, subsection 91(1), section 111, subsection 156(1) of the MGA
[14] Section 91 of the MGA
[15] Subsection 91.(4) of the MGA
[16] Subsection 82.(1) of the MGA

criticism about payments made to members of council by developing clear policies for compensation and reimbursement of expenses.

Council Compensation

A municipality's system of compensation should be fair and equitable given the time spent on municipal business and local costs and conditions. Councils also have the option of not providing any compensation or remuneration to council members, although consideration should be given to whether this may make it harder to attract people to council.

The amount that council members are paid or reimbursed for allowable expenses is public information and must be specifically spelled out in the remuneration bylaw as citizens have a right to know how their tax dollars are being spent. Those rates can only be modified by an amending bylaw, except in situations where an escalator clause (such as CPI) is included in the bylaw.[17]

An independent Remuneration and Allowances Commission must be appointed to review remuneration matters before making any changes.[18]

In setting the level of compensation by bylaw, councils should consider

- The policies of other municipalities of similar sizes and types
- The willingness and ability of its taxpayers to pay, including the financial situation of the taxpayers and the municipal corporation
- The types of activities that are considered municipal business for which payments will be made (for example, council members may be paid to attend committee meetings, but attending the annual parade is not covered)

Council members can be compensated for attending to municipal business based on, among other things:

- Annual salary
- A single fixed payment (annual, monthly or per diem) regardless of amount of time spent
- Actual time spent (such as a per meeting payment)
- A combination that comprises a fixed payment and a per meeting payment
- An amount per resident of the municipality

Allowable Expenses

In addition to compensation for municipal business, the bylaw could allow for council members to be reimbursed for certain expenses incurred while attending to municipal business.

If providing reimbursement of expenses, the council must establish which expenses will be allowed and include reasonable rates of reimbursement in a bylaw. Reimbursement of expenses could consist of a payment based on:

[17] Subsection 82(1) and section 126 of the MGA
[18] Subsection 82(3) of the MGA

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

Any perks (such as reserved parking, tickets to sporting events in the municipality, etc.) that are provided to council members by the municipality must be identified and included in the municipality's remuneration bylaw and should generally be kept to a minimum if being provided.

Accepting Gifts

The code of conduct bylaw is another bylaw that touches on what elected officials are entitled to receive or accept, and should indicate a maximum dollar value amount that elected officials may accept in the form of gifts from outside parties, in the ordinary course of the duties of office, without being in a position of conflict. The amount should be a nominal amount (under $50 for example).

Remember!

- ✓ Council makes decisions about services, policies and programs for the municipality
- ✓ Only council has the authority to make decisions for the municipality unless a proper delegation of authority, by bylaw, has taken place
- ✓ Individual councillors who make decisions on their own may be held legally or financially liable
- ✓ Council sets policy and staff implements those policies
- ✓ Councillors must consider the interests and needs of the entire municipality, not just their own ward or area of the municipality
- ✓ Debate and discussion are positive, but once a council decision is made, all members should respect it
- ✓ Council compensation and paid expenses and benefits are public information

ROLE OF ADMINISTRATION

ROLE OF ADMINISTRATION

The Chief Administrative Officer (CAO) is responsible for the implementation of municipal policies and the decisions of council (e.g., municipal administration). The CAO and any other staff take care of the everyday work of managing and running the municipality. Typically, the CAO is in place longer than the elected council and has an important role in providing for continuity in operations and services.

Councillors cannot direct or supervise municipal employees – this is the CAO's legislated responsibility.[19] The CAO is the primary point of contact between council and any municipal employees. However, a council or committee member may communicate directly with an employee of the municipality to obtain or provide information.[20]

Municipal councillors may not perform any duties that are or should be performed by a municipal employee, such as taking care of public works maintenance, issuing permits, or working in municipal departments.[21]

Administrative Services - Office and Communication

The council must, by resolution, designate a place as the municipal office and provide the public with information (e.g., public notice) about the location of the office.[22] This office must be accessible to all members of the public and located within the municipality. A new exception to this municipal boundary requirement was introduced with the 2020 MGA amendments if and when the office is shared with another municipality as its municipal office. Regardless of the office location, municipal councils will be required to establish and maintain regular office hours (minimum 20 hours a week) by December 23, 2022.[23]

In most cases where municipalities are offering regular services, their offices are well established and CAOs are already working at least that many hours.

The MGA sets out clear requirements for providing public notice of council and committee meetings (regular or special) and for changes to meeting logistics (date, time, place etc.).[24] As the MGA requirements now include 'electronic means' (on a municipal website) for most types of notice, the municipal website will need to be maintained on an on-going basis and kept up-to-date.

Chief Administrative Officer (CAO)

All municipal administrators have the title of Chief Administrative Officer. The CAO is the administrative head of the municipality and council's principal advisor.[25] Your CAO is responsible for the administration, financial management, and human resource management of

[19] Clause 93.(1)(c) of the MGA
[20] Subsection 93.(7) of the MGA
[21] Subsection 92.(2) of the MGA
[22] Section 5 of the General Regulations
[23] Section 85 of the MGA
[24] Part 5, Division 1 of the MGA
[25] Clauses 93.(1)(a) and (c) of the MGA

the municipality. Open, trusting and professional interaction between council and your CAO is vital to the smooth operation of your municipality.

As with previous legislation, the MGA requires all councils to appoint a person, by resolution, to the position of CAO to carry out the duties and responsibilities of the position.[26] Similarly, the council can revoke or suspend, by resolution, the appointment of an individual as CAO.[27] The appointment, suspension or revocation of the appointment of the CAO must pass by a vote of at least two-thirds of the members of council holding office.[28] The CAO cannot be a member of council.[29]

The CAO reports directly to council.[30] All other municipal employees ultimately report to the CAO through the administrative hierarchy. This does not preclude other municipal employees, such as the public works manager, from making presentations directly to council, where so requested.

A council may delegate specified powers, duties, or functions, by bylaw, to the CAO.[31] The CAO may further delegate those powers, duties or functions to another employee if council passes a resolution to that effect.[32] CAOs can delegate almost all their **own** duties or responsibilities (those assigned to them by the MGA) unless they are prohibited from doing so by bylaw.[33] The only exception to this is the authority to dismiss an employee, which is a duty reserved for the CAO.

Most CAOs are hired, like any other municipal employee, with a job description and an agreed-upon salary. Some municipalities have used employment contracts. Employment contracts are typically used when hiring for a defined period.

Duties of the CAO

In addition to the duties identified by the council, the CAO is responsible for ensuring that their statutory duties are carried out, even if they are delegated to another employee.[34] The duties assigned to the CAO under the Act include:

- Acting as the administrative head of the municipality and reporting directly to council
- Ensuring resolutions and policies of council are complied with
- Ensuring programs are implemented
- Advising and informing council on the operation and affairs of the municipality
- Hiring, directing, managing, and supervising municipal employees
- Exercising the powers and carrying out the duties and functions assigned to the CAO by council and the MGA or another Act

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[26] Clause 86.(2)c) of the MGA
[27] Clause 86.(2)(d) of the MGA
[28] Subsection 86.(6) of the MGA
[29] Clause 92.(1)(a) of the MGA
[30] Clause 93.(1)(a) of the MGA
[31] Subsection 88.(1) of the MGA
[32] Subsection 88.(2) of the MGA
[33] Subsection 94.(1) of the MGA
[34] Subsection 93.(1) of the MGA

- Notifying council if inactions or actions are contrary to bylaws, resolutions or legislation

The CAO has many other specific administrative duties and responsibilities under the MGA – these can be found in Part 4, Division 3 of the Act.

Council Expectations

Councils should expect the CAO to:

- Prepare and distribute council meeting agendas and supporting documents in a timely fashion, so council members can participate in the debate and make informed decisions.
- Prepare easy to understand monthly financial statements that provide a snapshot of the financial position of the municipality
- Provide well-researched and easy to understand reports that contain options to address issues, and a recommended course of action for council's consideration
- Advise council, when they feel that the council is acting outside of its legislative authority

Council as Employer

Every municipality should have a job description that clearly outlines the CAO's duties and responsibilities, regardless of whether they are a permanent or contract employee. An effective job description defines the responsibility of the position, as well as the results that the CAO is expected to deliver.

Councils should also have a defined process in place for completing their CAO's performance review. Performance reviews should be conducted regularly (e.g. annually). These reviews are an opportunity for council to provide feedback to the CAO on performance strengths and on areas that may require improvement. Some councils establish personnel committees that take the lead on human resource matters.

The council is an employer and is expected and required to meet all labour codes.

Employee Code of Conduct

As a council, you should expect that all employees of the municipality perform their duties in a way that gives residents confidence that council decisions and municipal policies are being objectively and fairly implemented. Council must also establish policies for its employees respecting the terms and conditions of their employment.[35]

A municipal employee code of conduct is required for all employees of the municipality, including the CAO, full and part time employees, and volunteers.[36]

Your municipal employee code of conduct:

- Has to include conflict of interest rules that at least prohibit:[37]

[35] Section 95 of the MGA
[36] Clause 86(2)(f) of the MGA
[37] Subclause 86(2)(f)(i) and (ii)

- The use of "insider" or non-public information to further, or seek to further, the private interests of the employee or a person closely connected to the employee (such as passing on information obtained through internal discussions about the value of a municipal property anticipated to be sold, or other similar matters)[38]
- The use of an employee's position to influence a decision to further their own interests or the interests of a person closely connected to the employee (such as recommending their spouse's company to do work for the municipality)

- Must include procedures for when an employee knows or suspects that there is a conflict of interest, along with the procedures to resolve the conflict, such as reporting a potential conflict to a supervisor [39]

The employee code of conduct should also:

- Provide direction about receiving gifts or benefits; however, codes often also make exceptions for token or minimal value gifts (codes typically prohibit employees from accepting gifts or benefits, directly or indirectly, arising from their employment)
- Prohibit improper use of municipal resources
- State the consequences of not disclosing a conflict or withdrawing during a conflict of interest situation
- Provide procedures for whistleblowing and protection for those who come forward

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

Remember!

- ✓ An open, trusting and professional relationship between the council and your CAO is vital
- ✓ Your CAO is responsible for implementing council's decisions and for the everyday management of the municipality
- ✓ Council members may not perform or take on the duties that are or should be performed by an employee
- ✓ The CAO is responsible for the duties assigned to the role under the MGA, in addition to those assigned by council
- ✓ The municipality must have an employee code of conduct – review your code early in your term to make sure it meets your expectations
- ✓ If your municipality does not have an employee code of conduct, begin the development of one now

[38] The consequences of using information obtained from a closed meeting are outline in Subsection 119(6) of the MGA.
[39] Subsection 86(4) of the MGA

MAKING DECISIONS

MAKING DECISIONS

Councils give directions or make decisions by passing resolutions or approving bylaws.[40] These must be approved by a majority vote of council members present at a meeting open to the public. The mayor votes only to break a tie vote among councillors.[41]

Resolutions are the only form of council decision-making, aside from the passage of bylaws. Resolutions usually deal with routine or administrative matters, such as approving a contract or agreement, buying or selling real estate, or adopting council policies.

Bylaws

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

A bylaw is necessary when legislation specifies that:

a. the municipality must have a bylaw; or
b. that a bylaw is required if/when the municipality wishes to take a certain action or offer a certain service (e.g. pay council members, charge fees).

Generally, bylaws should be used for matters that have a long-term or broad impact on the public and when using regulatory powers such as making laws for your municipality (e.g. zoning, animal control, parking, etc.).

Councils may use bylaws for other matters, even when a bylaw is not required by the MGA. However, if a bylaw is required under the MGA, a resolution will not be sufficient. In other words, anything that may be done by resolution may be done by bylaw, but anything that is required to be done by bylaw (i.e., council remuneration) must be done by bylaw.

Pre-MGA Bylaws:

- Continue to be in effect until repealed
- Are valid except where they conflict with the MGA
- Must be updated or replaced if they are missing required provisions

Before passing a bylaw, council needs to understand the impact of the proposed bylaw, on not only residents and property owners as a whole, but also on specific groups of property owners or stakeholders.

Council should also consider the municipality's ability to administer and enforce the bylaw, and the resources required to do so. Municipalities enforce their bylaws in various ways, including by inspecting properties, issuing compliance orders, issuing fines (when permitted in legislation) and taking a matter to court.

[40] Section 109 of the Act
[41] Section 89 and Subsection 115.(4)

Process for Making Bylaws

Following proper procedures for passing a bylaw is critical for ensuring the legal status of the document and the transparency of the process through public debate. The following steps are set out under section 124 of the MGA:

1. The bylaw must be read and formally approved by a majority of the council members present and voting on **two (2) separate occasions** at meetings of the council **held on different days**.
2. After the bylaw is read and approved a second time, it is formally adopted by resolution of the council.
3. The adopted bylaw must be signed by the mayor and CAO and sealed with the municipality's seal.

There are other requirements to keep in mind:

- The first step in developing a bylaw is to ensure that the municipality has the authority to take the desired action
- The bylaw must be kept in the register of bylaws for the municipality[42]
- A copy of the bylaw must be filed with the Minister[43]
- The CAO is responsible for ensuring that the indexed register containing certified copies of the bylaws is maintained[44]

If a copy of the proposed bylaw is made available to the public to read, at or before the council meeting, council may simply recite the bylaw name and a brief description in its reading, rather than reading the entire bylaw aloud during the meeting.[45]

The bylaw adoption process allows for council discussion and debate between each vote. Under certain circumstances, the public should also have the opportunity to express their views before the bylaw is finalized. The steps in making a bylaw must take place at a meeting that is open to the public – this process allows the public to hear the council's debate and know the council's decision.

In some cases, there are additional conditions, such as giving public notice and allowing the opportunity for public input, that must be met before a bylaw can be passed. Generally, these conditions are established to provide citizens with an additional opportunity to provide input in the decision-making process on matters that may have a significant impact on them. For example, the *Planning Act* sets out additional requirements for land use planning bylaws.

It is recommended that council and staff review the *Municipal Government Act* and Regulations and consult the Municipal Bylaw Processes Guidebook (available online) when passing bylaws in order to understand the full set of requirements.

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[42] Subsection 128.(1) of the MGA
[43] Section 129 of the MGA
[44] Clause 93.(3)(h) of the MGA
[45] Subsection 125.(1) of the MGA

Mandatory Bylaws

All municipalities are required to pass the following bylaws:

- ✓ Conflict of Interest Bylaw
- ✓ Code of Conduct Bylaw for Council
- ✓ Procedural Bylaw
- ✓ Access to Information and Protection of Privacy Bylaw
- ✓ Records Retention and Disposition Bylaw
- ✓ Procurement Bylaw (deadline for adoption will be set out in regulation)
- ✓ Emergency Management Bylaw (by 2021)
- ✓ Bylaws related to land use planning (by 2023)
- ✓ Election Bylaw (including electoral wards if desired) (required 90 days before an election)

Service-dependent Bylaws

The MGA did not require any bylaws to be in place immediately upon taking effect, except in situations where a municipality has chosen to:

- ✓ Borrow funds
- ✓ Establish tax rate groups, including commercial and non-commercial
- ✓ Create a reserve fund
- ✓ Establish or charge fees for services
- ✓ Provide any compensation, honorarium or remuneration to council members
- ✓ Provide grants
- ✓ Establish a public utility to provide water or sewer services
- ✓ Undertake bylaw enforcement
- ✓ Change the number of councillors
- ✓ Establish a tourism accommodation levy
- ✓ Provide animal control
- ✓ Deal with matters of noise, nuisance or property maintenance
- ✓ Share services with another municipality
- ✓ Regulate cosmetic pesticide use

Municipal Affairs has developed a number of model bylaws, which are available on the website: www.princededwardisland.ca/MGA.

Resolutions

The procedure for passing a resolution is less formal than passing a bylaw. A resolution may be used for any matter, unless a bylaw is specifically required. A resolution requires a mover (to bring forward the motion), a seconder (to support the motion) and a vote (on the motion). Once these steps have been completed, the motion becomes a resolution of the council. A resolution is a motion that has been voted on by council.

Generally, a successful resolution requires a simple majority of all members of council present at the meeting. There are, however, times when an enhanced majority or unanimous vote is required, such as: for an expropriation vote (two-thirds majority of the council members

present);[46] the appointment, suspension or dismissal of a CAO (two-thirds majority of all members of council);[47] or for adding additional business to the agenda of a special meeting (a unanimous vote of all members of council required).[48]

As with bylaws, it is the responsibility of the CAO to ensure that an indexed register containing certified copies of all council resolutions is maintained.[49]

Policies and Fair Decision-Making

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

As a council, you want your decisions to be fair and to be seen as fair. Councils establish municipal policies to ensure that their decisions are implemented fairly and consistently and are understood by the public. Policies provide an objective basis for decision-making. Examples of policies include: employee code of conduct human resources; purchasing; social media; and specific grants or donation processes (when enabled by a grant bylaw).

A register of policies should be established and maintained to facilitate the sharing of policies on request from the public under section 147 of the Act. The register can also serve as a policy manual, keeping and publishing all policies in one place to help staff apply policies consistently and to promote transparency to council, administration, and the public.

To guide councils in making fair decisions, policies should incorporate:

Relevant and clear criteria

- Council's policies should establish criteria that guide municipal decisions.
  - Example: A snow clearing policy would establish the priority order of roads to be cleared (e.g. school bus routes and main roads are cleared first); the hours of operation for snow clearing equipment; and the level of service to be provided (e.g. when and which roads are sanded, etc.)
  - Example: A hall rental policy should describe when hall rental fees can be waived (e.g. for not-for-profit groups)

Consistency with other decisions made in similar situations

- Citizens expect that people in similar situations will be treated similarly. If someone is treated differently, it should be because their circumstances are different.
  - Example: Decisions for maintenance work on municipal roads should be consistently applied and based on established policies
  - Example: Similar groups should be treated in a similar fashion when it comes to waiving hall rental fees

[46] Clause 189.(2)(b) of the MGA
[47] Subsection 86.(6) of the MGA
[48] Subsection 121.(4)
[49] Subsection 93(3)(i)

Reasonableness

- Decisions have to make sense to citizens and not pose any undue or unreasonable hardship on them. For instance, an unsightly property bylaw should establish a period of time within which a property owner would be required to clean up their property, rather than expecting immediate action.
  - Example: The period of time to come into compliance with a policy or bylaw must be reasonable, but could set out circumstances where property owners could appeal to council for an extension of time (e.g. if the property owner is out of town during the time period due to work or vacation).

Remember!

- ✓ Citizens expect their council to make fair, objective decisions in the best interests of the municipality as a whole
- ✓ Councils establish policies to ensure that their decisions about municipal services and programs are fairly and consistently implemented
- ✓ Policies are guideline documents and do not have the same force as a bylaw
- ✓ Bylaws are legally binding on the municipality and any parties that are the subject of the bylaw
- ✓ A municipality opens itself up to challenge if council does not follow legislated procedures or acts outside of the areas of jurisdiction set out in legislation

GETTING DOWN TO BUSINESS

GETTING DOWN TO BUSINESS

Every council must develop a procedural bylaw.[50] This bylaw helps to ensure that municipal business is undertaken in an open and transparent manner and that citizens know how and when they can participate in municipal decision-making.

A procedural bylaw establishes the processes to be followed when conducting municipal business. It establishes, within the framework of the MGA, the frequency, time and location of council meetings, how and when the public is to be notified of meetings and rules for how the public can participate at council meetings. The bylaw should also include rules of order for the conduct of meetings or may incorporate standard rules of order, for example, Roberts Rules of Order.

The procedural bylaw also establishes the process for creating council committees, the terms of reference and the appointment of people to those committees.[51] The model procedural bylaw prepared by Municipal Affairs provides one option for addressing the establishment, composition, terms, and types of committees, but other models consistent with the Act and regulations may be used.

Councils should review their procedural bylaw at least once during their term of office. A best practice would be to review your bylaws early in your term to ensure that your organizational structure and procedures meet your needs. Council should amend the bylaws if changes are required. A bylaw may only be changed or revised by bylaw.

Every council must also adopt a code of conduct bylaw and conflict of interest bylaw in accordance with the MGA and regulations.[52] The code of conduct bylaw must include rules regarding confidentiality, disclosure of council members' holdings, and the acceptance of gifts and must describe a process for resolving a breach of the code of conduct. The required content of this bylaw is outlined in subsection 107(2) of the Act.

The conflict of interest bylaw describes the procedure to be followed where a member of council knows or questions whether they have a conflict of interest, as well as the process to be followed by council if a complaint has been made to council that a member of council is in a conflict of interest.[53]

Municipal Procedures

Each council must establish the council meeting rules in the procedural bylaw. This bylaw ensures council members, municipal staff and the public clearly know and understand how the municipality conducts its business, and citizens know how they can participate. Beyond what is mandated in the governing legislation and regulations, it is up to council to determine the procedures that will be implemented in the municipality.

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[50] Clause 86.(2)(e) of the MGA
[51] Subclause 86.(2)(e)(iii) of the MGA
[52] Subsection 107.(1) of the MGA
[53] Subsection 97(2) of the MGA

Procedural Bylaw

The MGA outlines the required content of the procedural bylaw and the Procedural Bylaw Regulations outlines the minimum standards to be included.[54]

The procedural bylaw should also include:

- **Time for distributing meeting agendas to council** – adequate time prior to council's meeting must be provided to ensure council has an opportunity to review and make informed decisions (such as the Friday before the council meeting).
- **Day, time and place of regular meetings of council** – council meetings must be held at least 6 times a year in a pre-established schedule of regular meetings (the schedule could be monthly, ever second month, or in another pattern that suits the local situation).[55]
- **A cancellation policy** – for foreseeable occurrences such as a storm cancellation; in such a case a policy may state when a re-scheduled meeting will be held, such as on the next day or on the same day in the next week. Again, formalizing this policy in the bylaw provides clarity on procedures.
- **Rules of conduct at council meetings and public hearings** – established rules of conduct will ensure that council business is dealt with efficiently and effectively. Rules should be set for, among other things, the following:
    - To add an order of business on the meeting agenda
    - Points of order and how they are to be addressed by the mayor
    - Procedures to follow when two or more members address the mayor at the same time
    - Who may speak to a question before council, when they may speak, and for how long
    - How the mayor will deal with disturbances caused by a council member or a citizen at a meeting as disturbances at a meeting are disrespectful and unacceptable
- **Rules for public participation (e.g. citizens, stakeholder groups, and media) at council meetings and public hearings** – rules are established to ensure public participation is orderly. Rules should be established for, among other things, the following:
    - When delegations may register to be heard by council
    - A time limit for speaking and the procedure for extending the time limit
    - When petitions may be received
- **Audiotaping or video recording meetings by the media or citizens**. Some municipalities in Canada have implemented policies allowing audio taping or video recording of meetings, although in the past this has often been limited to the media or the municipality itself. Municipalities may wish to consider obtaining appropriate legal advice before limiting such activities.

[54] Clause 86.(2)(e) of the MGA
[55] Subsection 110.(3) of the MGA

Calculating Notice for Meetings

When an enactment says that ***at least*** X number of days, weeks, months etc. of notice for something is required, the PEI *Interpretation Act* states that the first and last days, weeks, months etc. do not count in that calculation of time. The same is true for time increments that use the word ***clear***. In effect, this means that the day an ad appears in the paper (or is otherwise posted) and the day a meeting is held do not count in the calculation. The actual minimum time for a requirement of seven ***clear*** days, is nine days. When in doubt on how to calculate notice, refer to the *Interpretation Act.*

TYPE OF MEETING	NOTICE REQUIREMENTS	STATUTORY REFERENCE
Regular Meetings annual schedule – min. of 6 per year open to the public, may be closed where permitted under MGA	✓ Electronic (website) ✓ One of: sign or poster (place accessible by public), newsletter, newspaper ✓ Includes time, date, place	MGA s. 110 & Procedural Bylaw Regulations ss. 1(2) and s. 2
Special Meetings called by CAO at request of Mayor or majority of Councillors, open to the public except where permitted to be closed under MGA	✓ 24 hours' notice to public ✓ Electronic (website) ✓ Sign or poster (place accessible by public) ✓ Notice to councillors ✓ Includes reason for meeting	MGA s. 121 & Procedural Bylaw Regulations ss. 1(2), s. 3, s. 4
Meeting changes time, date or place of meeting	✓ 24 hours' notice to public ✓ Electronic (website) ✓ Sign or poster (place accessible by public) ✓ Notice to councillors	MGA s. 110 & Procedural Bylaw Regulations ss.1(2) and s. 4
Committee meetings scheduled in advance or called as a special meeting, open to the public except where permitted to be closed under the MGA	✓ Scheduled – follow regular meeting requirements ✓ Called as a special meeting – follow special meeting requirements	

Changes in notice requirements do **NOT** affect *Planning Act* meetings for plan and bylaw amendments

Remember!

- ✓ Council must have a procedural bylaw to ensure that business is undertaken openly and transparently and that citizens know how they can participate. The bylaw facilitates orderly and effective council meetings
- ✓ Council must have a code of conduct bylaw and a conflict of interest bylaw
- ✓ Once passed, councils must operate in accordance with their bylaws
- ✓ Each council should review their procedural bylaw at least once in the term of office, and as a best practice, should review it early in the term – a council should make it a priority to amend the bylaw if any changes are needed
- ✓ Councils cannot choose to ignore or suspend bylaws that are no longer useful or necessary; bylaws are in force until amended or repealed by bylaw
- ✓ It is the responsibility of the municipality to ensure their bylaws are within their jurisdiction and are legally enforceable

MANAGING MEETINGS

MANAGING MEETINGS

Council is required to conduct their business at meetings that are open to the public.[56] This ensures that the public can hear the council's debate and be informed of the council's decisions. Active participation by the public, however, may only take place in the manner set out in the procedural bylaw.

Council members have a responsibility to attend council meetings. A council member is automatically disqualified from council, and must resign their seat, if they are absent from three consecutive regularly scheduled council meetings without the permission of council or unless the absence is due to verified illness.[57]

Regular Meetings

Councils are required to establish an annual schedule of at least six regular meetings for the conduct of municipal business.[58] The procedural bylaw establishes the rules and process for changing the date, time or place of all meetings – including regularly scheduled meetings – including timing and form of notice to the public and to members of the council or committee.[59]

Special Meetings

Council can also hold special meetings, which are additional meetings between regular meetings. Special meetings are generally held when important or unforeseen business arises that needs to be dealt with before the next regular meeting.

Special meetings must be called by a CAO when requested in writing to do so by the mayor or by a majority of council members.[60] At least 24 hours' notice must be given to the public in accordance with the procedural bylaw, and to the members of council (by providing a copy of the notice to each council member at the place where they have directed such notices to go).[61] The notice of the special meeting must include the date, time, and place of the meeting and the nature of the business that will take place at the meeting[62]. No other business can take place at the special meeting unless all council members are present and unanimously agree to deal with other matters.[63]

Any meeting other than a regularly scheduled meeting is a special meeting.

[56] Subsection 118.(1) of the MGA
[57] Subsection 98.(4) of the MGA
[58] Subsection 110.(3) of the MGA
[59] Subsection 110.(5) of the MGA
[60] Subsection 121.(1) of the MGA
[61] Subsection 121.(2) of the MGA
[62] Subsection 121.(2) of the MGA
[63] Subsection 121.(4) of the MGA

Emergency Meetings

The only time that an emergency meeting would be called is in the event of an actual emergency. Council has the authority to take any temporary measures necessary in the municipality to respond to and deal with an emergency as defined in the *Emergency Measures Act*, once an emergency management bylaw has been passed.[64]

Closed Meetings

The Act does allow council and committees to meet behind closed doors without the public present. This option, however, may only be exercised in very specific situations and only very limited decisions may be made behind closed doors.

The basic test of when a subject appropriately fits into one of the situations set out in subsection 119(2) is whether it is in the public interest that the matter be discussed in private. Additional considerations include:

- The purpose of a closed meeting is only to allow for the discussion of confidential matters. Any conversation or debate on aspects of the topic that is not confidential must only be dealt with in a public setting.
- The intention of going behind closed doors should never be to hold the substantial discussion on a matter in secret, with the decision simply being rubber-stamped in public.

In order for a council or council committee to close all or part of a meeting to the public, they must first pass a resolution to do so at a public meeting.[65] The resolution to close a meeting to the public must state the clause or clauses of subsection 119(1) that describe the matter to be considered at the closed meeting.[66]

Meetings can only be closed for the following matters:[67]

- Commercial information that could be damaging to the municipality or parties involved if disclosed
- Information received in confidence that could be damaging to the municipality or parties involved if disclosed
- Protected personal information about an identifiable individual
- Human resource matters including labour relations or employee negotiations

The basic test of when a discussion can be held behind closed doors is whether it will hurt the public interest to discuss the matter in public.

Be certain that the subject is enabled in section 119 of the Act before closing the meeting to the public.

The public has the right to know that council or a committee is meeting behind closed doors.

The council or committee must still make its decision in at a meeting open to the public.

[64] Section 144 of the MGA
[65] Subsection 119.(1) of the MGA
[66] Subsection 119.(3) of the MGA
[67] Subsection 119.1(1) of the MGA

- Matters still under consideration by council on which the council has not yet publicly announced a decision, that if discussed in public prior to a decision being made, could limit the municipality's ability to negotiate on behalf of residents
- Current or anticipated legal matters or the review of legal advice
- The conduct of an investigation under, or enforcement of, an Act or bylaw
- Information which, if disclosed, could prejudice security and the maintenance of the law

Council decisions (resolutions and bylaws) can only be made at an open meeting of council. Bylaws cannot be developed or passed during a closed meeting and resolutions can only be made to:[68]

- Give instructions to a lawyer, a person negotiating on behalf of the municipality, or to an employee;
- Adjourn the closed meeting; or
- Open the meeting to the public

A resolution to hold a meeting behind closed doors can be for a time:

1. During or at the end of the meeting (regularly scheduled or special meeting).
2. On a future date.

The public has a right to know about the closed meeting and public notice of a closed meeting must be given. If a matter comes up that requires a closed meeting (such as a legal matter that has come up suddenly) and no resolution has been passed to hold a closed meeting, the council would first call (and provide public notice of) a special open meeting of council or council committee, with the stated business being to proceed to a closed meeting of the council or council committee. The meeting would begin with a resolution to proceed to a closed meeting, with all of the required content, at which point the closed meeting may begin.

Council, council committee and municipal employees are prohibited from disclosing or acting on any information that was obtained at a closed meeting until the matter is dealt with at an open public meeting.[69]

There are penalties if a council member, committee member or employee discloses or acts on information obtained at a closed meeting and this results in a financial loss for the municipality or financial gains for that individual. The individual could be liable for the damages or gains incurred and the council member/committee member could be disqualified from council, the committee, or both[70].

Closed Meeting Scenarios

Scenario 1 – Land Purchase

Preliminary negotiations

[68] Subsection 119.(2) of the MGA
[69] Subsection 119.(5) of the MGA
[70] Subsection 119.(6) of the MGA

- The municipality is in negotiation to buy land for a municipal project. At the closed meeting, the council agrees on a price with the landowner and an option for another parcel. The commitment to the landowner at this stage would have to stipulate that the purchase is subject to ratification by council at a public meeting.

Formalizing the decision

- At a public meeting of council, a resolution would be passed for the purchase, including the property location, the purchase price, and the property owner's name. The resolution could also permit council to continue negotiating on the option as discussed at the closed meeting and that the municipality would not finalize action on the option until that component is also ratified at a public meeting of council.

Scenario 2 – Negotiating a Major Event

Preliminary negotiations

- The municipality is in negotiation to contract a specific event with a promoter/team/organization. At the closed meeting, the council agrees on a price with the other party but confidentiality remains a concern given competition for the event. The commitment to the other party at this stage would have to stipulate that the final agreement is subject to ratification by council at a public meeting.

Formalizing the decision

- At a public meeting of council, a resolution would be passed for the event, to ratify the agreement in principle. If details remain confidential and strategic promotion of the event remains a concern, the resolution could refer to the event, date, and other party in generic terms but should include the gross expenditures for the municipality attached to the event. Discussion at the public meeting should also touch on other expenditures associated with the event, such as infrastructure upgrades, policing, and any other municipal costs, to ensure that the public has full access to information on the costs.

Electronic Meetings

Electronic meetings are allowed if authorized by the procedural bylaw and if council members are unable to meet in person.[71] Electronic meetings must be conducted in a way that enables the council or committee members to hear and speak to each other.[72] Notice must be given to the public of the meeting and that it will be conducted by electronic means.[73]

When a public meeting of the council or a committee is to be held electronically, facilities must be provided that allow the public to see and hear the meeting's participants at a place specified in the notice and a municipal employee must be in attendance.[74]

[71] Subsection 122(1) of the MGA
[72] Clause 122(3)(a) of the MGA
[73] Clause 122(3)(b) of the MGA
[74] Clause 122(3)(c) of the MGA

If enabled in the procedural bylaw, individual members of the council or committee may also participate in a meeting by phone or by electronic means. There is still a requirement that all council or committee members present are able to hear and speak to the person participating electronically. That person would count for quorum, but there are certain situations set out in the MGA where that person would not be permitted to vote on a matter before the council or committee.[75]

No meetings may be held or decisions made by email.

Recent (2020) amendments to electronic meeting provisions of the MGA include:

- A new subsection was created that exempts municipalities from the requirement to provide and staff a public facility during times of emergency so long as members of the public can hear the proceedings and have the opportunity to contribute to the proceedings of the council meeting as provided for usual municipal operations (MGA 122(3.1)).
- Language that clarifies municipal obligations for public access and inspection of electronic meeting related documents during states of emergency (MGA 118.1),
- Clarification of the definition of electronic meetings (MGA 121(1),
- Clarification of obligations to provide specific language describing how to access electronic meetings when producing notices of electronic meeting (MGA 122(3)(b)).

Quorum

Council meetings require a quorum of council to be present before a meeting convenes, and a quorum must be maintained at all times during the meeting. If quorum is lost during the meeting, the meeting must end and no further business can be conducted.

A quorum at any council meeting is a majority of all members[76] and a quorum is required at all times for meetings of council and council committees.[77] Vacant positions are not counted for establishing a quorum.

Council Composition	Quorum Required
6 members + Mayor	3 + 1 = **4**
8 members + Mayor	4 + 1 = **5**
10 members + Mayor	5 + 1 = **6**
12 members + Mayor	6 + 1 = **7**

[75] Subsections 122(4)-(6) of the MGA.
[76] Subsection 113(2) of the MGA.
[77] Subsection 113(1) of the MGA.

When there is a vacancy on council, but at least four council members remain on council, a quorum is the majority of remaining members.[78]

When the number of council members is reduced to less than four due to vacancies on council, the Minister may order that the remaining council member(s) be considered quorum until elections are held to fill the vacancies.[79]

When a council member has declared a conflict of interest or has been found to have a conflict of interest, they are not counted for the purpose of determining whether a quorum of council is present for discussion and voting.[80] Extra steps will be taken in extraordinary situations such as where all council members, or all but one, have a conflict of interest.[81]

A staff member must be present at all council or committee meetings.

Meeting Agenda

Council business is organized through the development of a formal agenda. The agenda ensures meetings are held in an efficient and effective manner. Council can establish the agenda order in its procedural bylaw.

You should expect your CAO to provide you with the agenda and supporting documents for the agenda items before each council meeting. It is important to participate in the debate and be prepared to make informed decisions. As a best practice, agendas and other meeting documentation should also be available to the public in advance of council meetings.

It is the responsibility of each member of council to be informed and prepared.

The agenda is draft until approved by those present at the beginning of the meeting, and council or committee members may ask to add or change agenda items. If the rest of the council or committee agrees, the agenda is then amended in accordance with the request.

Voting

All council members, except the mayor, must vote on all matters properly before the council unless the member declares that they have a conflict of interest pertaining to the matter before council or there is a specific case where the council member has been excused by resolution from voting.[82]

Voting cannot be done by ballot or another secret method.[83] Except where a council member has removed themselves as a result of a conflict or has been excused from voting by the council, any instance where a council member present at the meeting does not vote or refuses to vote (abstains from voting) is counted as a vote in favour.[84] Generally, a council member

[78] Subsection 113(3) of the MGA.
[79] Subsection 113(4) of the MGA.
[80] Subsection 114(2) of the MGA
[81] Subsections 114(4)-(6) of the MGA
[82] Subsection 115.(1) of the MGA
[83] Subsection 115(2) of the MGA
[84] Subsection 115(5) of the MGA

would only be excused from voting if they had missed the substantive discussion on the matter at hand and would not have the same information as other members of council needed to make an informed decision.

The Mayor may only vote to break a tie.[85]

Meeting Minutes

Council meeting minutes are the official public record of council's decisions and it is very important that the minutes accurately reflect council's decisions. The minutes are a record of what was decided (and why), not a verbatim transcript of what was said, but should include factors that council weighed in making its decision.

Your CAO is responsible for ensuring the minutes of all council meetings are recorded.[86] The CAO or other staff will prepare draft meeting minutes and will usually have them available within a few days after the meeting. Review them carefully, as council will approve them at the next council meeting. Council can revise the meeting minutes before approving them if they do not accurately reflect the decisions made.

Meeting minutes must be made available to the public and should be posted on the municipal website and available in the municipal office.[87] Regardless of how they are shared, the minutes should be available on a timely basis. Unofficial meeting minutes may be shared if the procedural bylaw allows, provided that the minutes are clearly marked as draft or unapproved.

As a minimum, meeting minutes must include the following:[88]

- ✓ The date of the meeting
- ✓ The names of council members present at the meeting
- ✓ The subject matter of issues discussed
- ✓ A record of any decision made (including the wording of the resolutions)

The minutes can further include a summary of reports of committees or a brief note on presentations made by delegations. Council members should not ask to have comments or observations recorded in the minutes.

The meeting minutes for a closed meeting must be made public and must include:[89]

- ✓ The date of meeting
- ✓ The names of those present at meeting
- ✓ The type of matter under subsection 119(1) of the Act that was discussed at the meeting

[85] Subsection 115(4) of the MGA
[86] Clause 93(3)(a) of the MGA
[87] Subsection 116(3) of the MGA
[88] Subsection 116(1) of the MGA
[89] Subsection 116(2) of the MGA

Records

Minutes, bylaws, resolutions and policies of a council must be retained in accordance with the MGA and regulations.[90] It is the responsibility of the CAO to maintain:

- An indexed register of certified copies of bylaws[91] and
- An indexed register of certified copies of resolutions [92]

Municipal Committees

Most municipalities establish committees to more effectively organize how council undertakes its business. Municipalities have considerable flexibility concerning committees and may establish them for any municipal purpose. Standing committees and ad hoc committees are the two types of council committees set out in the Procedural Bylaw Regulations and all committees or boards would fit within one or the other of these types.

- **Standing Committees -** are delegated certain powers and duties to make recommendations to all of council on municipal matters. Examples include the Financial Management Committee or the Recreation Committee. These committees are created through the process established in the procedural bylaw.
- **Ad Hoc Committees -** are formed to investigate and report on particular matters. Once the committee has fulfilled its purpose, the committee is dissolved. Examples include an Arena Committee (to explore a new facility) or a Centennial Committee (to plan a centennial celebration for the municipality).

Through the procedural bylaw, the council sets out the rules for the terms and appointment procedures for committees, with appointments being made by either the council or the mayor as set out in the bylaw. The mayor is a member of all committees, and when the mayor is in attendance at committee meetings, the mayor has all the regular rights of a committee member.[93]

Councils also have flexibility about who may be appointed to committees. If permitted in the bylaw, residents, stakeholders or subject matter experts may be appointed to the committees, although the chairperson of a committee is generally a member of council. Including external voices on committees is a good way to bring expertise and new perspectives to the table as well as to involve the public in the municipality's decision-making process.

Committee meetings are open to the public unless closed by resolution. As with council meetings, committee meetings may only be closed to the public for specific reasons as outlined in Section 119 of the MGA.

Some municipalities choose to rotate committee members on an annual basis to enable all councillors to gain experience in all areas. Other municipalities prefer to leave committees

[90] Subsection 117.(2) of the MGA
[91] Clause 93.(3)(h) of the MGA
[92] Clause 93.(3)(i) of the MGA
[93] Section 90 of the MGA

intact for the length of the term of office so that members may gain a depth of knowledge in particular areas. There are pros and cons to both methods.

Several island municipalities have moved to a 'committee of council' system rather than setting up multiple committees. If this is of interest to your council, reach out to one of the municipalities that have made this choice.

Committee Meetings

Committee meetings can be set as regularly scheduled meetings or be called as special meetings. The notice requirements, processes for meeting changes, and other requirements set out in the MGA, the Procedural Bylaw Regulations, and the municipality's procedural bylaw must be followed.

Council committees can make a recommendation to the council but committee resolutions are not binding on council unless they are passed by council as a resolution of council.[94] All decisions must be made by the council at a public meeting of the council, except the limited resolutions that may be passed at a closed meeting.[95] All decisions of council are expected to be debated and voted on in public.

Remember!

- ✓ All council and committee meetings are open to the public – council and committee meetings may be closed to the public only in limited circumstances under the MGA, but all decisions must be made at an open meeting
- ✓ All council members are expected to attend, participate, and vote at council meetings. You are disqualified from council if you miss three consecutive regular meetings without council's permission, unless the meetings are missed because of illness
- ✓ Meeting minutes are the official public record of the council and committee's decisions – ensure they are accurate
- ✓ A refusal or failure to vote on a matter before council is counted as a vote in favour
- ✓ Committees explore and develop recommendations on their assigned topic but have no decision-making authority except where so delegated by the council by bylaw[96]

[94] Subsection 88(4) of the MGA.
[95] Subsection 119(2) of the MGA.
[96] Subsection 88(4) of the MGA.

CONFLICT OF INTEREST

CONFLICT OF INTEREST

As a member of council, you hold a position of trust. The public expects you to act in the best interests of the municipality. The general rule is that a member's personal interests should not conflict with their public duty.

The MGA sets a standard of proper conduct for council members and speaks to conflict of interest in Part 4, Division 4.

Types of Conflict of Interest

A council member is in a conflict of interest, in relation to a matter, if the member or a person closely connected to a member:

- Has any pecuniary (financial) interest;
- Is a shareholder, officer, agent or director of a corporation or any other organization that has dealings or contracts with the municipality;
- Is a party to dealings or a contract with the municipality; or is a member of a partnership that has dealings or a contract with the municipality.[97]

In addition to the familiar rules around financial interests, the MGA also prohibits participating or voting when impartiality is affected, stating that

> [a] council member is in a conflict of interest if the member makes a decision or participates in making a decision in the execution of his or her office while at the same time the member knows or ought reasonably to know that the member's **private interests** or the **private interests of a person closely connected to the member affected the member's impartiality in the making of the decision**.[98]

Situations where an individual council member's personal interest, or the interest of their immediate family (parent, spouse, or child), are affected by something before council would affect the member's impartiality. In other cases where there may be no specific benefit, an association or connection with an applicant organization or group may result in a member wearing more than one hat. In that situation, their ability to act and make decisions solely as a member of council is affected and this may constitute a conflict (for example, where a housing organization is seeking support from council and a member of council is an active member on the board of the organization or a religious organization of which the council member is a member).

There are generally accepted exceptions to conflict. For example, when a member's interest is so remote that it couldn't reasonably be expected to affect their judgment (the member volunteered once with the housing organization as part of an office event), or where the interest is shared with all or most other residents and represents an interest in common (such as in setting tax or utility rates). The MGA provides clarity for the exceptions to conflict as it

[97] Subsection 96(1) of the MGA.
[98] Subsections 96(1)-(2) of the MGA.

relates to pecuniary (financial) interest and certain exceptions relating to members who provide goods and services to the municipality.[99] If you are unsure whether or not you are in conflict of interest, consult these sections for more information.

Understanding the rules of the Act allows you to perform your duties without fear of unintentionally becoming involved in a conflict of interest situation. There is no fault to lay in having a conflict - there is, however, fault in not declaring the conflict and removing yourself from all discussion and decision-making on the matter.

A best practice, used by more and more municipalities on PEI, is to include as a standard agenda item, a line wherein the mayor inquires as to whether any member has a conflict involving any item on the agenda at the beginning of the meeting.

General examples

Council members cannot participate in discussions or decisions about contracts or purchasing in situations where they own a company with whom the municipality is considering doing business. Members of council cannot use or pass onto someone inside information about the value of a municipal property that is going to be sold. Council members cannot receive payment or gifts from private individuals or companies for making a decision or influencing a decision. Council members cannot recommend using their spouse's company to do work for the municipality.

Common examples of conflict situations at the municipal level

- Contracts tendering and awarding practices
- Council members who are firefighters joining in council discussions on the fire service
- Municipal land transactions
- Hiring procedures, including summer, student and other employment programs

Dealing with Conflict of Interest

The Act sets out the procedures you must follow if you find yourself in a conflict of interest in relation to a matter before council or council committee. Council members have certain obligations; they must

- Declare their interest before the council
- Remove themselves from the meeting and any other meeting during discussions of the matter (this means leaving the room altogether)
- Abstain from discussions and voting on the matter
- Not attempt to influence discussion or voting on any question, direction recommendation or other action involving the matter (whether before, at or after a meeting)[100]

Your interest may be direct – for example, you are a business owner and council is making a zoning decision that affects your business. Your interest could also be indirect - for example,

[99] Subsection 96(5) and 96(7) of the MGA.
[100] Subsection 96(3) of the MGA

your spouse owns, or is employed by, a business to whom your municipality is considering awarding a contract. Likewise, if your impartiality is challenged in a way that may not apply to other members of council, you may be in a conflict.

Sometimes conflict of interest is not very clear. The first step is to ask yourself whether you, your spouse, your child or other close family members stand to gain or lose financially by council's decision or if your ability to make a fair decision is affected by your affiliation with another group or body. If you are unsure whether you may have a conflict, your legal advisor can provide information to you in this area.

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

If a council member fails to meet the above obligations, they will be **disqualified from serving on council.**[101] However, if a council is satisfied that the council member's action (or inaction) was inadvertent or due to a genuine error in judgment, they can pardon the council member by resolution.[102] This option is only intended to be used to protect council members from the consequences of their decision where there is a reasonable explanation for the error in judgment and another reasonable person may have made the same mistake.

The council's bylaw addressing conflict of interest must set out the procedure to be followed by a council member who suspects or believes they have a conflict of interest, as well as the process to be followed by council if a complaint has been made to council that a member of council is in a conflict of interest.[103]

Complaints

A complaint that a member of council is in conflict of interest can be made to council by another member of council, or by an elector (in writing).[104] The council's conflict of interest bylaw (or procedural bylaw or code of conduct bylaw, if bylaws are combined) must establish the procedures to be followed when council receives a complaint.[105] After following such procedures, council must state whether the council member is in a conflict of interest or not.[106]

Electors in a municipality (ten or more are required) can petition the Supreme Court for a declaration that a council member is disqualified from serving on council when a council member does not meet their obligations regarding conflict of interest.[107]

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[101] Subsection 96(4) of the MGA
[102] Subsection 96(6) of the MGA
[103] Subsection 97(2) of the MGA
[104] Subsection 97(1) of the MGA
[105] Clause 97(2)(b) of the MGA
[106] Subsection 97.(3) of the MGA
[107] Subsection 101.(1) of the MGA

Right to be heard

If a council member has declared a conflict of interest in a matter but that matter is one where individual members of the public have a right to be heard (for example, a public meeting on a zoning change), the member:[108]

- must leave their place at the council table, but is not required to leave the room
- has the right to be heard at the meeting in the same way as a person who is not a member of council.

In order to continue to meet the remained of the rules around conflict of interest, the council member shall leave the meeting room after having been heard until the matter has been dealt with by the council, or until the meeting has progressed to the next item on the agenda.

Other Considerations

Conflict of interest is addressed in the Act. It is not the only potential legal pitfall for elected officials; there are also common law rules that may apply. Two of the more common rules are touched upon briefly below. It is advisable to get legal advice if it is suspected that one of these situations might have arisen.

Bias

Bias is one such rule. "Bias" can be loosely defined as instances where a council member has a closed mind or holds preconceived notions on an issue that limit their willingness to consider all factors fairly. For example, bias might be argued where a member's best friend is bidding on a municipal contract or where someone campaigned on a certain action. The council member may not have any pecuniary interest in the matter but if the member cannot be objective and consider other positions in voting on the matter, they should seek legal advice on how to proceed.

Bias is not ordinarily presumed to exist, but where a member has close ties to a person involved in municipal business or has repeatedly refused to consider opposing views or information contrary to their position, a reasonable person may believe that a bias exists and any decision made on the matter may be subject to legal challenge.

Breach of Fiduciary Duty

Another similar common law rule is a "breach of fiduciary duty." Generally, in common law, anyone who acts for the benefit of another person is a "fiduciary." A fiduciary must always act in the best interest of the person for whom the fiduciary acts. Elected municipal officials have a fiduciary duty to the residents they represent.

A member can breach this duty by voting on a decision of council that may not financially benefit the member, but is truly not in the best interests of the municipality. The duty doesn't only arise when a member is participating in council decisions. The duty may be breached in ways that have been codified in the *Criminal Code of Canada* such as municipal fraud or

[108] Subsection 96(8) of the MGA

corruption, but it can also be breached by municipal property for a member's own benefit or some other form of improper use of the position of councillor.

Protection

With all the discussion on conflict of interest, it is also important to remember that the law will protect municipal council members and the municipality if they are operating in a responsible manner in accordance with the Act, regulations, and their bylaws.

Municipal and Personal Liability

The MGA clarifies municipal liability in detail.[109] A municipality that has the authority and discretion to do something will not be liable for doing it or for deciding not to do it as long as the action or inaction is done, or not done, in good faith.[110] Council and committee members, municipal staff and volunteers will not be liable for damages resulting from any loss or damage as long as they are acting in good faith while performing their duties and exercising their authority under the MGA.[111]

The MGA requires municipalities to carry liability insurance.[112]

Code of Conduct Bylaw

Council must adopt a code of conduct bylaw in accordance with the MGA and regulations.[113] The required content of this bylaw is outlined in Subsection 107(2) of the Act. The code of conduct bylaw will set out guiding principles for council and deal with a range of matters including, among other things: general conduct, confidential information, public disclosure statements, gifts and benefits, and use of municipal property. The code of conduct bylaw sets out the expectations of council members.

Remember!

- ✓ Council members must make decisions in the best interest of the municipality and its residents first and foremost, and if these decisions are made appropriately and in good faith, the law will protect councillors and the municipality from liability
- ✓ There are clear rules about conflict of interest – refer to the MGA if you are uncertain.
- ✓ The first responsibility for deciding whether you have a conflict of interest rests with you
- ✓ Other members of council or the public may also question whether a member has a conflict of interest
- ✓ If you are in doubt as to whether you have a conflict of interest, contact a lawyer. The consequences of violating conflict of interest rules can be severe and can include losing your seat
- ✓ Council may also seek a legal opinion on questions of conflict – in most cases, the same lawyer would not advise both the council and the individual member

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[109] See Part 9, Division 2 of the MGA
[110] Section 241 of the MGA
[111] Section 250 of the MGA
[112] Section 249 of the MGA
[113] Subsection 107.(1) of the MGA

PUBLIC ENGAGEMENT

PUBLIC ENGAGEMENT

Certain provisions under the *Municipal Government Act* and the *Planning Act* require a public meeting or hearing to obtain public input on matters that have a significant impact on the citizens and property owners in the municipality.

In addition, council can seek public input or hold a "town hall" meeting on any other matter it chooses. A public meeting is often a good idea when council is considering major changes that have a direct impact on citizens; for example, a new way of delivering a municipal service or to gauge public interest in a new capital project.

If considering changes to services or if presenting proposals to the public, it is import to present the full range of considerations, such as:

- Short term and ongoing costs (capital, operations)
- Long term costs (maintenance and replacement)
- Impacts on service levels
- Impacts on tax rates

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

A **public meeting of council** is a meeting of the council where council is discussing council business and making council decisions, where the public is entitled to be present. This is the default type of council meeting. The procedural bylaw would set out if and when members of the public might be permitted to address council at the council meeting.

Town hall style meetings are more informal public meetings, intended to engage with or inform the public. No council decisions or business takes place at a town hall meeting.

Requirement for Public Input – MGA

The MGA requires public notice, opportunities for public input or a public hearing for the following situations:

- Municipal restructuring and incorporation[114]
- Prior to adopting the financial plan (budget)[115]
- Closing public streets[116]
- Objections to local improvements[117]
- Selling municipal land below market value[118]

[114] Subsection 17(4) of the MGA
[115] Section 151 of the MGA
[116] Subsection 213(3) of the MGA
[117] Section 203 of the MGA
[118] Section 143 of the MGA

- Major events, development, business operations, or change of use of a development within Victoria Park (Charlottetown)[119]

Requirement for Public Input – *Planning Act*

- Before a planning board recommends the adoption, amendment or review of an official plan to a municipal council, they must give an opportunity for residents and other interested parties to make representations[120]
- Before a council makes (or amends) bylaws implementing an official plan, the council must give an opportunity for residents and other interested parties to make representations[121]

Plebiscites

A municipal election is the only public vote with binding results. Plebiscites are sometimes used to gauge public opinion on a matter that falls within municipal jurisdiction, but the results are not binding on council.[122]

Financial Plan (Budget) Meeting

Council must provide their residents an opportunity to participate in a financial plan meeting. This meeting must take place at least two weeks before the financial plan is adopted.[123] Municipalities can choose how to best engage their residents about their financial plan, as long as there has been some type of public engagement prior to its adoption.

Remember, it is council's responsibility to adopt the financial plan. There is no public vote on the financial plan.

Your Role

All council members should attend and participate in all public meetings unless they are excused by council, are ill, or have declared a conflict of interest in a matter before council. Your attendance at a public meeting will ensure that you understand the public's view on the matter and are able to make informed decisions.

To be prepared for a public meeting, council members should:

- If needed, ask the CAO to review the information about the proposal or topic with you, as well as any other important information so that you are sure in your knowledge about the issue
- Decide who will present the information and answer questions from the public and media

[119] Subsection 262(6)
[120] Section 11 of the *Planning Act*
[121] Section 18 of the *Planning Act*
[122] Subsection 63.(1) and 63.(4) of the MGA
[123] Subsection 151.(1) of the MGA

- Review the public meeting procedures, so you are comfortable with how the meeting will unfold

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

Encouraging Attendance

Council can take steps to encourage citizens' attendance and participation at public meetings. Your CAO is responsible for undertaking the steps required to provide residents and other affected parties with the advance notice required under the procedural bylaw and legislation, and that relevant information is available to the public regarding the issues to be discussed at public meetings.

Strategies to encourage attendance at public meetings include:

- **Additional advertising above and beyond any advertising required by legislation.** Advertising can be provided through the local newspaper, the municipality's website and social media accounts, or by posting notices in frequently visited public places (e.g. the library, recreation centre). Distributing newsletters to residents and property owners, and inserts in utility bills are examples of other options. The notice should clearly state how the public can participate; for example, by making a presentation to council.
- **Schedule the public meeting in the evening so more people are likely to attend.** Scheduling a meeting during the day, when many people work, will mean that many citizens cannot attend the meeting. Alternatively, daytime open houses combined with more formal evening meetings facilitate greater public participation regardless of people's schedules.
- **Ensure that a detailed information package is available well in advance**. This ensures that citizens have ample time to review the package before the meeting. Council should try to ensure that citizens have a reasonable understanding of proposals being considered by council, so that they can ask meaningful questions and provide council with informed comments. At a minimum, an information package should include information about the reason for council's proposal, the cost of the proposal, options that have been considered by council, and the impact on residents and property owners as a whole, as well as on specific property owners or stakeholder groups.

Remember!

- ✓ Public engagement is important to the decision-making process
- ✓ Respect the opinions of others - listen to all views that are presented
- ✓ Public or town hall meetings are not necessarily the same as public or open meetings of council (where the public has the right to be present but not necessarily to participate). Be clear on what type of meeting you are holding
- ✓ Council must hold public meetings for some matters, but may hold a public meeting for any matter
- ✓ Hold public meetings at a time, place and location that will help encourage public attendance

COUNCIL'S ROLE IN FINANCIAL MANAGEMENT

COUNCIL'S ROLE IN FINANCIAL MANAGEMENT

Council has overall accountability for the financial position of the municipality. Council must ensure that the municipality's resources are protected and finances are responsibly managed so that priority services and programs can continue to be delivered at a reasonable cost.

Council achieves this fiscal management by ensuring effective financial controls are in place, developing a specific financial plan or budgets, monitoring the financial position of the municipality throughout the year, and reporting on the municipality's financial position at the end of the year.

As a council member, you are not expected to be an accountant or an auditor. Your CAO will provide you with the information you need. Councillors are accountable for using municipal resources to meet their municipality's needs and must closely monitor the financial position of the municipality by comparing actual expenditures against projected expenditures on a regular basis.

Internal Controls

Each municipality must develop a system of internal controls to ensure assets are protected and transactions are properly recorded in the financial records. Some examples of internal controls are:

- segregation of incompatible duties
- standardized procedures and documentation
- physical protection of assets
- analytical review
- reconciliation
- verification
- reporting
- audit

Internal controls are a coordinated set of policies and procedures that reflect a comprehensive strategy for achieving management objectives.

Municipal management should develop the system of internal controls that is specifically designed to address areas of risk inherent in that municipality's operations. As the nature of the activities conducted by the municipality change, changes to internal control systems will likely be required.

One fundamental internal control which is required by the *Municipal Government Act* is that all cheques, electronic transfers, agreements, contracts, deeds and other legal or other financial instruments must be signed by both the CAO and the mayor. This requirement provides an effective and efficient check and counter balance to those with responsibility for maintaining financial records and the custody of the underlying assets. Council and the mayor provide an important oversight role in ensuring the system of internal controls is not circumvented by management or staff. Payments should always be tied to an invoice or written contract or agreement. When making payments, it is critical that those signing the cheques confirm that

the amounts and recipients correspond to those invoices or written contracts or agreements. Blank cheques should never be signed by management, the mayor or council.

Annual Financial Plan (Budget)

The municipality gets its authority to deliver services and programs and levy property taxes for the entire year through the adoption of its annual financial plan. Developing and adopting the financial plan is one of council's most important policy decisions. Through the financial plan, council identifies the services and programs that will be delivered to residents and property owners during the year, the level of those services and programs, and how they will be paid for.

In making these financial decisions, council must consider the impact to residents and property owners as a whole, as well as on specific groups of property owners or segments of the community. A financial plan is a plan of action and an implementation tool. The financial plan also provides a benchmark and is a valuable performance indicator.

There are three required components of the financial plan:

1. Operating Budget
2. Capital Budget
3. Five Year Capital Expenditure Program (including an Asset Management Plan)

Beginning the financial planning process early ensures that there is adequate time to develop the financial plan, prepare comprehensive financial information for the public and hold the public meeting on the financial plan. Carefully planned and prepared operating and capital budgets serve the municipality in several ways, including:

- Outlining the priorities of the municipality and ensuring that the required municipal services are provided and sustained
- Assisting in long term planning by allowing the municipality to build up or use surplus funds as desired and required

Not less than two weeks before the financial plan is adopted by council, council must provide notice and hold a **public meeting in respect of the financial plan.**[124] The public meeting helps to ensure that council has a chance to listen to any public concerns or requests regarding the financial plan. Your CAO will prepare, or have prepared, a draft financial plan and provide information for council's review, to facilitate council's budgetary discussions and to provide information to the public with respect to the financial plan.

The financial plan must be adopted and tax rates set before the start of each fiscal year, **on or before March 31**. Starting in 2019, the municipal fiscal year begins on **April 1** of each year.[125] In transition to the Province's fiscal year, municipalities had a one-time 15-month fiscal year (January 1, 2018 to March 31, 2019).[126]

[124] Section 151 of the MGA
[125] Section 149 of the MGA.
[126] Clause 149(2)(b) of the MGA.
[126] Subsection 150 (4) of the MGA

A copy of the adopted financial plan must be filed with the Minister by **April 15** of the fiscal year.[127]

Components of the Financial Plan

1. Operating Budget

The operating budget establishes estimated expenditures for each service and program provided by the municipality (e.g. recreation, fire protection, community facilities, roads, land use planning, and administration) for the year, and the revenues necessary to fund these expenditures, including property tax revenues. [128] The operating budget should compare the projected costs of services and programs to the actual costs from the previous year.

The operating budget is included in the year end financial statements to assist users of the financial statements compare the financial plan to actual results. Accordingly, operating budgets should be prepared and presented with financial statements, wherever possible, on an accrual basis consistent with appropriate accounting standards.

The operating budget must include the estimated amounts of revenues from each of its sources of revenues and transfers, including:[129]

- ✓ Property tax
- ✓ Grants and transfers from other governments (conditional and unconditional)
- ✓ Transfers from the municipality's reserve funds
- ✓ Any projected operating surplus incurred in the previous fiscal year
- ✓ Fees and charges for operation of any works, improvements, services and facilities.

The operating budget must also include the estimated amount needed to fund the following expenditures and transfers:[130]

- ✓ The operations of the municipality
- ✓ All debt obligations
- ✓ Transfers to reserve funds
- ✓ Transfers to capital funds
- ✓ Any projected operating deficit incurred in the previous fiscal year
- ✓ Other amounts that the municipality is required to pay

In addition, the operating budget must:[131]

- ✓ Include the estimated revenues from all utilities and controlled corporations.
- ✓ Include the estimated amount needed by the council to fund the expenditures and transfers for each utility and controlled corporation.
- ✓ List the established tax rate groups, the rates for each tax rate group, and the estimated revenue from each tax rate group.

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[128] Clause 150(2)(a) of the MGA
[129] Section 2 of the Financial Plan Regulations
[130] Section 3 of the Financial Plan Regulations
[131] Sections 4, 5 and 6 of Financial Plan Regulations

Councils cannot project a deficit in their operating budgets in respect of expenditures other than amortization and its public utility.[132] The MGA provides more details about the transfer of a deficit and processes to follow if a deficit is anticipated.[133]

2. Capital Budget

The capital budget establishes the estimated capital expenditures for the coming fiscal year on capital expenditures such as equipment, buildings, and water and sewer treatment facilities, as well as how they will be paid for. Council should adopt a capital expenditures policy that will provide direction on the difference between capital expenditures and operating expenses.

The capital budget should include:[134]

- ✓ Costs to acquire, construct, remove or improve each proposed capital project
- ✓ Anticipated sources of funds (e.g. reserves, borrowing, operating funds, grants, infrastructure or other federal or provincial funding programs)

3. Five-year Capital Expenditure Program (Including Asset Management Program)

Municipalities are required to include a five-year capital expenditure program in their financial plan.[135] The five-year capital expenditure program will establish the long-term capital needs and priorities for the municipality.

Five-year capital expenditure programs are by their nature estimates based upon assumptions and forecasts that are certain to change. As facts replace assumptions, and as amounts of revenue, priorities and costs of items are more accurately estimated, the details of the plan are developed. Council determines the timing of projects, their costs, and how they are intended to be funded.

The five-year capital expenditure program must set out:[136]

- ✓ a description of each proposed capital project for the next five years;
- ✓ the estimated amount of money required to implement the expenditure program; and
- ✓ the anticipated source of the money required to implement the expenditure program.

Managing Capital Assets

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

Many municipalities across the country have partnered on infrastructure projects such as recreation, waste management, and sewer and water treatment facilities. Municipalities can

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[132] Subsection 153 (1) of the MGA
[133] See section 153 of the MGA
[134] Section 7 of the Financial Plan Regulations
[135] Section 9 of the Financial Plan Regulations
[136] Section 8 of the Financial Plan Regulations

often save money, as well as increase the level and quality of services, by partnering with another municipality.

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

Starting March 31, 2019, all municipalities must have an asset management program. This must include:

- ✓ an inventory of municipally-owned infrastructure (including an inventory of any controlled corporation's capital assets) which specifies condition, purpose, life expectancy, risk and priority
- ✓ the financial commitments required to maintain the infrastructure, factored into the five-year capital expenditure program

The inventory of the infrastructure must now include the requirements set out in Financial Plan Regulations.

Critical Budget Decisions

Councils should ask the following when making budget decisions:

Do proposed expenditures reflect council's priorities?

Is the money being spent to achieve council's goals and objectives? Does current spending match municipal priorities? What percent of the total budget is being spent on specific expenditures? Does this expenditure make sense?

Are services affordable and delivered efficiently and effectively?

Are residents and property owners getting value for their money? Is the most value being achieved from tax dollars or are there alternative ways, including sharing services with others, to deliver services? How do your municipality's expenditures for the service compare to similar, neighbouring municipalities?

Are services sufficiently funded?

Underfunding municipal services simply to keep tax rates low can lead to service delivery and liability questions for the municipality down the road. If the municipality or its property owners are not willing to invest in specific services through their taxes, council may wish to consider whether the service is a priority for the municipality.

Do tax levels reflect the ability and willingness of your residents and property owners to pay?

What are the economic circumstances of residents? What is the impact on property owners as a whole or on specific property owner groups? Has the municipality's tax rate been increasing? How does your municipality's tax rate compare to similar, neighbouring municipalities?

Are services sustainable in the foreseeable future?

Can the type and level of services be maintained in view of the economic and population trends in your municipality, without unreasonable tax increases? Are the costs of delivering the

services, and therefore the level of taxation needed to fund them, increasing? Are there other ways of doing business or providing services that could be considered? If reserve or surplus funds are being used to finance expenditures, what is the longer-term impact on the municipality's financial position?

Taxation

Property taxes are the main source of revenue for municipalities. In Prince Edward Island, the Province determines property assessment values. The property assessment values provided by the Province provide the base upon which a municipality applies a tax rate to raise tax revenue for that municipality. Both the Province and the municipalities levy property taxes, and the Province collects the taxes on behalf of both parties, transferring over the municipalities' tax revenues each month. The rates are applied to the taxable assessment of the properties in the municipality on a per $100 of assessment basis. Council establishes the tax rate after approving the annual estimates (budget) to raise the necessary revenue to pay for services and programs.

In municipalities, fire protection is included in the operating budget portion of the municipal financial plan and is included with all other services in the calculation of the tax rate.

Some municipalities are becoming increasingly diverse and are comprised of a range of different types of property owners including farmers, seasonal residents, seniors, institutions and business. Many municipalities offer differing service levels in different areas of the municipalities. For these types of situations, the Act enables the levying of different rates in different areas of a municipality[137] and the levying of fees for service.[138]

Each different rate within a municipality requires a unique tax rate group that municipalities must establish in their **tax rate group bylaw**. Every municipality must at a minimum establish a commercial tax rate group and a non-commercial tax rate group by bylaw, even if the tax rates are the same. Each year before March 31, the council will approve by resolution the rate of municipal taxation to be charged for each tax rate group.

Timelines for Creating or Changing Tax Rate Groups

When a tax rate group has been created or changed by council, they are required to notify the Provincial Tax Commissioner by December 31 of the year before the tax rate group change is to take effect. If a municipality has been restructured, the Provincial Tax Commissioner is to be notified by September 30 of the year before restructured tax rates become effective. [139]

Council then establishes specific tax rates and notifies the Provincial Tax Commissioner not later than March 31 each year. Once tax rates are established, they take effect on January 1 and must remain in place for the full calendar year.

[137] Subsection 160(2) of the MGA
[138] Subclause 162(1)(a)(i) of the MGA
[139] Subsection 160(6) of the MGA

COUNCIL DECISION	DEADLINE	NOTE
Creating or changing a tax rate group	December 31 of preceding year	Gives the Tax Commissioner time to update tax records
Restructuring	September 30 of preceding year	Gives the Tax Commissioner time to update boundaries and tax records
Setting tax rate	March 31 of current year	Tax rates are retroactive to January 1st

User Fees and Charges

Only users of a specific service or program pay for them. Council has discretion to determine the services for which it will charge a fee, the amount of the fee, the basis for calculating the fee and who is required to pay. Many municipalities apply user fees or charges for licenses, permits, use of municipal facilities (e.g. recreation centre programs), parking, dog tags, and so on.

Fees and charges are established by the council through their fees bylaw, although they may also opt to enable fees in each subject area bylaw (for example, their zoning and development bylaw).

Other Forms of Revenue

Tourism Accommodation Levy

A municipality has the authority to impose a tourism accommodation levy by bylaw.[140] The council will set the rate in the bylaw. The revenue from the levy must be used to promote the municipality as a tourist destination.[141]

Local Improvements

A council, by bylaw, can authorize a local improvement and establish a charge or fee to be charged to each property that benefits from the local improvement.[142] Local improvements are capital projects or connections to real property for sewer, drainage and water mains.

Ancillary Products and Services

A council may make an ancillary product available to the residents of the municipality that is compatible with the service it is authorized to provide. Council can charge a fee for an ancillary product.[143] For example, a municipality that is offering a sustainability program could opt to sell solar panels, or a water utility might sell or offer water barrels to promote conservation.

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[140] Subsection 161 (2) of the MGA
[141] Subsection 161 (5) of the MGA
[142] Section 201 of the MGA
[143] Section 206 of the MGA

Capital Projects and Borrowing

Municipalities are increasingly planning for and undertaking large, expensive capital projects. The magnitude and costs of these projects usually generate public interest in the municipality's capital plan. Citizens want to understand what council is proposing, and why and how the financing of a project will affect them.

Involving citizens from the outset is important. Comprehensive information about council's proposals should include:

- ✓ the total cost of the project
- ✓ whether there are other sources of funding for the project
- ✓ how the municipality intends to pay for its share of the costs (including through borrowing, etc.)
- ✓ the impact on property taxes for property owners as a whole as well as for specific property owners

In addition to borrowing, the municipality is also permitted to establish reserve funds, by bylaw.[144] If surplus funds from the capital budget are available at the end of a fiscal year, they may be directed to a reserve fund or allocated to specific future projects in the upcoming capital budget or projects identified in the five-year capital expenditure program.

Long-term borrowing enables a municipality to pay for capital projects and equipment over a period of years, often matching the term of the borrowing with the estimated useful life of the capital asset. In this way, those who benefit from the capital asset are the ones who pay for it. Council's must authorize the borrowing of money for capital expenditures by bylaw[145].

Borrowing Limit

Council may not borrow funds for capital projects if that borrowing would cause the municipality to be in debt in excess of ten per cent of the current assessed value of all real property in the municipality; however the Minister may authorize a borrowing in excess of this limit in exceptional circumstances. [146] Any guarantee or loan made by council must be included in the total capital debt of a municipality for the purpose of calculating the borrowing limit of ten percent.[147] Once a borrowing has been approved, the debt repayment obligation must be reflected in the municipality's financial plan.

Short-Term Borrowing

Councils can authorize, by bylaw, the borrowing of money on a short-term basis to finance operating expenditures.[148] The borrowed amount cannot exceed 50% of the total estimated revenues of the municipality for that year.[149]

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[144] Section 155 of the MGA
[145] Section 164 of the MGA
[146] Subsection 164 (3) of the MGA
[147] Subsection 158 (5) of the MGA
[148] Subsection 166 (1) of the MGA
[149] Subsection 166 (2) of the MGA

Monitoring Municipal Finances

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

Your CAO should provide you with regular, timely, and easily understandable financial reports on a monthly or quarterly basis. In addition, your CAO, through the use of variance reports, should provide you with explanations of large differences in budgeted expenditures compared to actual expenditures, at that point in time. Sharing, or tabling, these updates with the public at council meetings is a very good way of ensuring the public is kept informed as well.

Council can authorize an expenditure for a purpose other than that set out in the operating or capital budget, so long as the amount does not affect the total amounts estimated for the operating and capital budget.[150] There are other circumstances where council can authorize expenditures when there are variances from the plan – the procedures for doing so are described in the Act.[151]

Annual Financial Reporting

The annual audit or review engagement of the municipality's year-end financial statements is council's most important tool for reporting on the financial position of the municipality. These financial statements ensure accountability and transparency, providing citizens with the opportunity to compare actual year-end results with the annual budget.

Council must appoint an accounting professional licensed to practice public accounting in Prince Edward Island each year to report to council on the financial affairs of the municipality for the preceding year. Your appointed accounting professional must be able to meet your municipality's terms and deadlines for submitting the audit. Your audited or review engagement report financial statements must be completed and be submitted to council for approval by June 30 and to the Minister responsible for Municipal Affairs by July 15 in each year for the preceding fiscal year ending March 31.[152]

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

Council may wish to invite the accounting professional to a council meeting to discuss the financial statements upon completion of the

Municipalities with a projected annual budgeted expenditure of less than $50,000 can appoint an auditor to undertake a **review engagement** of the financial statements until March 31, 2020. After this, all municipalities no matter their budgeted expenditure will need to appoint an auditor to complete an annual audit

[150] Subsection 152 (2) of the MGA
[151] See section 152 of the MGA.
[152] Part 6, Division 4

report. Council should promptly address matters identified or recommendations made by the accounting professional.

The municipality must, by July 31, give public notices that the professional accountant's report and the financial statements are available to the public at the municipal office.[153] Many municipalities post their financial statements and other financial information on their websites so they are easily accessible to citizens.

Councils may notice a difference between the year-end results reported in their audited financial statements and the results from the financial plan. The municipal audited financial statements must be prepared according to generally accepted accounting principles (GAAP) established by the Public Sector Accounting Board (PSAB). To provide comparability, the annual financial plan should, where possible, be prepared on the same basis as the financial statements.

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

- ✓ The financial statements are to include municipal organizations such as libraries, fire departments, planning districts, utilities and any other municipal corporations
- ✓ The audited statement recognizes the financial effects of transactions in the period they occur, regardless of when received or paid (e.g., vacation pay owing to employees etc.). The most significant of these is the amortization of tangible capital assets

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

Municipalities with a projected annual budgeted expenditure of less than $50,000 can appoint an auditor to undertake a **review engagement** of the financial statements until March 31, 2020.[154] After this, all municipalities no matter their budgeted expenditure will need to appoint an auditor to complete an annual audit.

Grants and Other Assistance

A council can issue grants or provide other forms of assistance – this must be authorized by bylaw. The grants bylaw will set out the criteria for issuing a grant. The council, through this bylaw can, amongst other things, loan money, grant land, or provide for the use of municipal services or land, under certain circumstances. The requirements for providing grants and assistance are outlined in the MGA.[155]

Remember!

- ✓ Council is responsible for the financial position of the municipality

[153] Subsection 177 (1) of the MGA
[154] Section 172 of the MGA
[155] See section 158 of the MGA

- ✓ The annual financial plan (budget) should reflect council's service and program priorities taking into account the needs of all residents and property owners, and the impact on them
- ✓ Monitor the financial affairs of your municipality to ensure you are staying on course
- ✓ Ensure your annual audited or review engagement financial statements are received and submitted on time and made available to the public

SERVICE DELIVERY AND BYLAW ENFORCEMENT

SERVICE DELIVERY AND BYLAW ENFORCEMENT

Municipalities exist as a form of government primarily to provide services to their residents, property owners, and stakeholders.

Municipalities may provide services and regulate activities as set out in section 180 of the MGA, as well as throughout the other parts of the Act. Before entering into a new service program or area of regulation, be sure to check that the action is within the municipality's jurisdiction.

Bylaw Enforcement

One of the primary services associated with municipalities is that of regulating behaviours and actions to protect the public interest, such as through property maintenance and unsightly properties bylaws, land use and zoning bylaws, or noise bylaws. Associated with those services is the authority of municipalities to enforce their bylaws; to do so, they may appoint bylaw enforcement officers.[156] Bylaw enforcement officers are appointed by the Chief Administrative Officer (CAO).[157]

In order to enable the use of bylaw enforcement officers, the municipal council must establish a bylaw that relates to the education and experience qualifications that are required for a person to be employed as a bylaw enforcement officer.[158] The bylaw must also describe the complaint and discipline process with respect to complaints regarding inappropriate conduct made against a bylaw enforcement officer.[159]

To facilitate the enforcement process, municipal councils can make bylaws that authorize a municipal offence ticket to be issued for a wide range of offences (see Section 227 of the MGA). A person who contravenes a bylaw is guilty of an offence and is liable on conviction to fines and even imprisonment.[160]

Open Government

In Prince Edward Island, the provincial *Freedom of Information and Protection of Privacy (FOIPP) Act* does not currently apply to municipal governments (the City of Charlottetown, the City of Summerside, the Town of Stratford and the Town of Cornwall will come under the *FOIPP* Act on April 1, 2019).

Citizens need access to information to understand how their municipalities operate in order to know about the decisions of council, to be aware of the services and programs available and how those services and program are delivered, as well as to understand how they can get answers to their questions. For this reason, there are certain types of municipal records that must be proactively shared with the public and municipalities will be required to adopt a bylaw

[156] Subsection 223.(1) of the MGA
[157] Subsection 223.(4) of the MGA
[158] Subsection 223.(2) of the MGA
[159] Clause 223.(2)(c) of the MGA
[160] Subsection 234.(1) of the MGA

in accordance with the Access to Information and Protection of Privacy Regulations once they are developed. The types of municipal documents that are considered to be public include:[161]

- ✓ Assessment information
- ✓ Approved financial plans
- ✓ Approved annual financial statements
- ✓ Auditor reports
- ✓ Minutes (both of council and of committee meetings)
- ✓ Bylaws which have received first reading
- ✓ Resolutions and information used to pass a resolution
- ✓ Issued permits
- ✓ Approvals
- ✓ Grants, contributions and donations
- ✓ Contracts (some exceptions apply)
- ✓ Council compensation
- ✓ Strategic plans
- ✓ Policies
- ✓ Documents tabled or adopted at meetings (some exceptions apply)

All municipalities should strive to conduct their business in as open and transparent a manner as possible.

Protection of Privacy

Municipalities have a responsibility to ensure that personal information is protected. Any of the items that are provided publically as a result of the access to information bylaw will need to ensure that personal information is protected prior to release or publication.[162]

Municipalities will be required to develop a bylaw that protects the personal information which is collected by the municipality. The bylaw will also need to establish what information can be collected, the purpose for collecting the information, how the information can be used, and who will have access to the information.[163]

When a municipality collects personal information, it must ensure that the person is informed of the reason for the collection of their information, how the information will be used, and who will have access to that information.[164]

Remember!

- ✓ Most municipal documents must be made publicly available
- ✓ Municipalities should make accessing information as simple as possible (have key documents readily available at the municipal office or post them on the municipality's website)

[161] Section 147 of the MGA
[162] Subsection 147 (2) of the MGA
[163] Subsection 148 (1) of the MGA
[164] Subsection 148 (3) of the MGA

CITIZEN CONCERNS

CITIZEN CONCERNS

Under the MGA, the public has several means to raise concerns with their municipality and act if they feel it is necessary. Citizens can pursue complaints if they do not believe that the municipality has satisfactorily resolved complaints or concerns that they have identified.

Complaints to the Province

While the first point of contact for citizens should be the municipality, citizens may also raise concerns with the Province. As the regulator of local governments, the minister has the power to order investigations or inquiries and may ultimately determine if a council is inoperable or not functioning in the best interests of the residents, or not acting in compliance with the Act.

The minister may order the council to undertake certain actions and ultimately has the authority to dismiss individual members of council or all of council, in which case the minister may appoint an official trustee to function in the place of council.

In the majority of cases, however, the Department will work with municipal councils and staff to help them institute good practices, develop and improve procedures, and understand expectations.

Courts

The Province is not, however, the final arbiter of municipal issues with residents – the courts are. The Province can provide interpretation and advise a municipality; however, municipalities are governed by their enabling legislation and as such, the courts ultimately have the final word.

The MGA provides more opportunities and processes for citizens to voice concerns and complaints, such as conflict of interest complaints, directly through the courts. It is advisable for municipalities to put in place complaint tracking systems to minimize situations where citizens feel that they are not being heard by their council.

All citizens have a fundamental right to make a challenge to the courts if they believe that a municipality is acting outside or contrary to its legal authority such as: not following legislated procedures, spending money without proper authority, or passing a bylaw when there is no legal authority to do so.

The court process is often lengthy and is almost always adversarial and, therefore, it should always be a last resort. Council should make every effort to work with citizens to address their concerns, as ultimately council is elected by, and accountable to, their residents.

Remember!

- ✓ Most citizen complaints can be resolved through discussion. Take time to listen to citizens who voice their concerns
- ✓ All citizens have a right to take a municipality to court and certain processes are specifically laid out in the Act

ELECTIONS

ELECTIONS

Election processes are the same for all municipalities. The procedures for general elections are guided by the:

- Municipal Government Act (MGA)
- Municipal Election Regulations
- Campaign Contributions and Election Expenses Bylaw Regulations
- Plebiscite Regulations

The MGA and Regulations describe election processes including:

- all day elections
- advance polls
- establishing election bylaws
- qualifications of electors and candidates
- alternative voting methods
- procedures for advance nominations
- acclamation and vacancies
- campaign financing
- eligibility requirements for municipal employees seeking election to municipal council

Some aspects of municipal elections that are optional for municipalities, but they must have a bylaw if they chose to incorporate those optional aspects. All municipalities are required to have a Campaign Contributions and Election Expenses Bylaw.

Municipal Affairs recommends developing one election bylaw to cover both the optional aspects and the mandatory provisions of the Campaign Contributions and Election Expenses Bylaw Regulations. Alternatively, a municipality could adopt separate bylaws for the election components they are regulating.

Term of Office

The term of office for a council is four years. Council members who were elected on November 5th, 2018 will begin their term on December 7th, 2018 and serve until the December 6th, 2022.[165]

In the event of a vacancy on council, a by-election must be held to fill the vacancy.[166] If the vacancy occurs in the last 12 months of a council's term, the council can hold the vacancy open until the next general election if the council can maintain quorum.[167]

Election Processes

Elections will be held every four years on the first Monday in November, starting with the November 5, 2018 election (the Resort Municipality has a different election cycle and held their

[165] Subsection 79 (2) of the MGA (Resort Municipality – September 7th, 2018 – September 6th, 2022)
[166] Subsection 6 (1) of the MGA
[167] Subsection 60 (3) of the MGA

first election under the MGA in August 2018). On election day, the polls must open at 9:00 am and remain open until 7:00 pm.[168]

The nomination period runs from the 4th Wednesday before the election to the 3rd Friday before the election.[169] All nominations must be received by 2:00 pm on the third Friday before the election, which is called "nomination day."

On nomination day, if there are just enough candidates to fill the seats, the candidates will be elected by acclamation. If there are more candidates than seats, there will be a general election.

The nomination period will be extended an additional seven days for nominations if there are not enough candidates for the seats on nomination day.[170] If there are not enough nominations received at the end of the seven days to fill the vacancies on council, the nominated candidates are acclaimed and the Minister may appoint the required additional number of councillors as long as they are qualified to hold office and are residents of the municipality.

When there are more candidates nominated than there are council positions, voting at the advance poll and on election day will occur as scheduled.

Campaign Contributions and Election Expenses

Every municipal council is required to have a Campaign Contributions and Election Expenses Bylaw in place. The Campaign Contributions and Election Expenses Bylaw Regulations set out the rules for a municipality's bylaw. Many municipalities address these rules in their "Municipal Election Bylaw."

The bylaw must establish:

- ✓ who can contribute to an election campaign
- ✓ the limits on campaign contributions (donations) and on election campaign expenses for mayor and councillor
- ✓ the disclosure requirements for campaign contributions and election expenses for candidates

What are the requirements for candidates?

Candidates must:

- ✓ keep complete and proper accounting records of their campaign contributions and election expenses during the election expense period
- ✓ keep receipts of expenses
- ✓ provide receipts to contributors
- ✓ not accept anonymous campaign contributions

[168] Section 37 of the MGA
[169] Section 43 of the MGA
[170] Subsection 44 (3) of the MGA

- ✓ only make election expenses during the election expense period (check the municipal bylaw for advertising expenses)
- ✓ follow the campaign contribution limits and election expense limits set out in the municipal bylaw
- ✓ ensure a contributor is allowed to donate to the campaign (check the municipal bylaw - municipalities can specify the types of contributors allowed to donate)
- ✓ file a Disclosure Statement of Campaign Contributions and Election Expenses with the Municipal Electoral Officer (MEO) or the Chief Administrative Officer (CAO)
- ✓ keep required records for seven years

All candidates, whether elected or not, must file a Disclosure Statement of Campaign Contributions and Election Expenses with the CAO for the municipality (or the MEO if they are still appointed). The Disclosure Statement must be filed within two months of the municipal election.

The Disclosure Statements for all candidates will be posted on the municipal website for at least 6 months.

For the 2018 municipal election, only certain aspects of the Campaign Contributions and Election Expenses Bylaw Regulations were in force. Candidates were required to:

- keep records
- not accept anonymous donations, and
- file a Disclosure Statement of Campaign Contributions and Election Expenses.

The contribution and expense limits and the contributor restrictions do not apply for the 2018 municipal election

Vacancies on Council

If a vacancy occurs on a council, the council must:[171]

1. Declare a by-election to fill the vacancy.
2. Set a date and hold a by-election within 6 months of the vacancy occurring (the date must be a Monday).[172]

The council can hold the vacancy open until the next general election if the vacancy happens in the last 12 months of a candidate's term and if council can still maintain quorum.[173] The by-election process shall be conducted in accordance with the MGA and the regulations, along with any bylaws of the municipality that relate to municipal elections.[174]

Council's Role during the Election Process

Council's only role in the municipal election process occurs at the beginning of the process. It is council's responsibility to ensure that the municipal election bylaw is in place and up to date. Council is also responsible for appointing the Municipal Electoral Officer (MEO) and the Deputy MEO. After this, the MEO will oversee the entire election process.

The council cannot be involved in any election-related tasks.

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[171] Subsection 60 (1) of the MGA
[172] Subsection 5 (1) of the Election Regulations
[173] Subsection 60 (3) of the MGA
[174] Subsection 5 (2) of the Election Regulations

Remember!

- ✓ The election process is the underpinning of governments and councils are elected governments
- ✓ Access and transparency are key components of democratic processes
- ✓ Open election procedures help promote resident engagement in their council

MAKING THE MOST OF YOUR TIME ON COUNCIL

MAKING THE MOST OF YOUR TIME ON COUNCIL

Your time on council can be a wonderful opportunity to shape the future of your community. While teamwork can sometimes take a lot of energy, building respectful relationship with the other members of council can ensure that debate is helpful.

To ensure that your council experience is productive, keep the following final tips in mind:

- Keep the council and administration roles in mind
- Keep the citizens and the public interest in mind
- Ensure your municipality operates in accordance with the Act and the municipality's bylaws, policies, and procedures
- Work as a team

Other rules of thumb:

- Trust your Chief Administrative Officer
- Follow your policies and bylaws
- Consult the *Municipal Government Act* and associated regulations
- Bookmark the Municipal Affairs and FPEIM websites
- Call Municipal Affairs and FPEIM
- Call a colleague with another municipality
- Consult a lawyer

Remember that any guide is just a snapshot of the various factors that you will need to keep in mind as an elected official and there are many other resources out there to help you through your time in office.

APPENDIX

APPENDIX 1- The *Municipal Government Act* (MGA) at a Glance

Part 1: Definitions, Purposes and Powers

- Preamble, key definitions, purposes of the Act and application of the Act are described
- Purposes of a municipal council are described
- Powers of a municipal council including natural person powers are defined
- Commits the Minister to consultation with the Federation of Prince Edward Island Municipalities on any substantive amendments to the MGA or associated regulations

Part 2: Municipalities

- Change in classes of municipalities, with 'communities' now classified as 'rural municipalities'
- New standards and criteria for municipalities who propose formation, restructuring or a change in class
- All processes for the establishment, dissolution and restructuring (amalgamation, annexation and boundary changes) of a municipality will now involve a single and consistent approach.
- Requirement for all municipalities to provide mandatory services
- Provides for the continuation of existing municipalities

Part 3: Elections

- Changes to eligibility of candidates and voters
- All day elections and voting at advance polls
- Nominations in advance
- Establishing election bylaws
- Appointment of an electoral officer
- Voting using alternative methods
- Campaign contributions, spending limits and disclosures
- Election by ward or at large
- Procedures for by-elections and plebiscites
- Election offences and penalties

Part 4: Municipal Government

- Terms of office for council
- Size of council
- Requirement for accessible municipal office by December 2022
- Expanded powers and duties of council
- Requirement for a procedural bylaw
- Requirement for code of conduct for employees
- Requirement for remuneration bylaw if paying members of council

- Change in title to mayor and deputy mayor
- Prohibition against council members performing duties of an employee
- Duties of council and mayor
- Expanded duties and authority of the CAO
- Requirement for conflict of interest bylaw
- Disqualification from serving on council and vacancies
- Requirement for code of conduct for council members

Part 5: Municipal Administration

- Requirement for minimum number of regular meetings of council
- Open meetings of council
- No secret voting
- Management and disposal of municipal records
- Restrictions on meeting behind closed doors
- Disclosure of confidential information
- Notification for special meetings
- Electronic meetings
- Sharing municipal services
- Prohibition against granting privileges and exemptions
- Transferring municipal land below market value
- Procedures for bylaws
- Requirement to have an emergency management program
- Requirement for access to information bylaw
- Requirement for protection of personal information bylaw

Part 6: Financial Matters

- New fiscal year
- Requirement for a financial plan
- Annual financial plan (budget) approved by council for all classes of municipalities
- Prohibition on deficit budgets
- Amendments to the financial plan
- Requirement to establish a borrowing bylaw
- Requirement to establish a grants and other forms of assistance bylaw
- Requirement to establish a reserve fund bylaw
- Taxation procedures
- Fees, tourism accommodation levies, and other revenues
- Borrowing and debt restrictions
- Requirement for procurement bylaw
- Illegal expenditures
- Preparation of financial statements
- Audits (and review engagement until April 1, 2020)

Part 7: Municipal Jurisdiction

- Broad list of areas of general jurisdiction and authority
- Flexible options for establishing a municipal utility
- Greater guidance related to expropriation of land
- Requirements related to local improvements
- Supplementary products that support established municipal services
- Greater guidance related street ownership, management and maintenance

Part 8: Powers of the Minister

- Minister has a wider range of powers and tools
- Minister may appoint an auditor to examine accounts of a municipality
- Minister many order an inspection
- Minister may order an inquiry
- Minister may issue orders for compliance with legislation and if needed may dismiss members of council or all of council

Part 9: Bylaw Enforcement, Offences and Liability

- Authorizes a council to appoint enforcement officers by bylaw that sets out education and experience expectations for officers and a process for addressing complaints against an officer
- Enables enforcement officers to be employed by more than one municipality
- Establishes time limits for prosecuting a contravention of a bylaw
- Authorizes a council to issue summary offence tickets for a wider range of municipal offences
- Describes municipal liability and protection in more detail and depth
- Greater authority to take against for non-compliance with bylaws

Schedules

- Schedule A: Victoria Park
- Schedule B: City of Summerside Electric Utility

APPENDIX 2 - Overview of the *Municipal Government Act*

The *Municipal Government Act* (MGA) gives municipalities a variety of powers, both general and specific, so that they can govern effectively and deliver services efficiently to their residents. The following is an overview that describes specific parts of the MGA.

Part 1 – General

This part of the Act includes the preamble, key definitions, purposes of the Act, application of the Act, purposes of a municipal council and broad powers including natural person powers. Part 1 also commits the Minister to consulting with the Federation of Prince Edward Island Municipalities on any substantive amendments to the MGA or associated regulations.

Part 2 – Municipalities

This part of the Act includes provisions regarding the establishment, restructuring (amalgamations, annexations, etc.) and categorization of municipalities. This includes requirements for identifying classes of municipalities, naming new municipalities, continuation of existing municipalities, and changes to the name or class of a municipality. Part 2 also sets out criteria for the establishment of a new city or town. It also includes provisions respecting the authority of the Lieutenant Governor and Council, by order, to establish, restructure or dissolve a municipality. It is through this part that 'communities' have been reclassified as 'rural municipalities.'

Part 3 – Elections

This part of the Act sets out requirements pertaining to the conduct and administration of the municipal election process, including qualifications of electors and candidates, employee election activity, nomination proceedings, election proceedings, methods and procedures for voting , and election results. Part 3 also includes provisions related to plebiscites, campaign financing rules, controverted elections, and offences and penalties.

Part 4 – Municipal Government

This part of the Act sets out rules, roles, and responsibilities for municipal councils and the Chief Administrative Officer (CAO). This includes provisions relating to the general jurisdiction of council, council size, term of office, vacancies, resignation, and disqualification from council. Part 4 also includes provisions related to the powers and duties of council, roles of mayor and deputy mayor, authority and duties of the CAO, prohibitions on members of council serving as an employee or directing the work of a municipal employee except through the CAO. This part also includes provisions respecting requirements for a municipal office as well as the establishment of a procedural bylaw, code of conduct bylaw for council members and policy for employees, conflict of interest procedures by bylaw, and policies pertaining to terms and conditions of employment for municipal employees.

Part 5 – Municipal Administration

This part of the Act sets out the requirements and processes related to municipal administration including acts of council, meetings of council, rules respecting quorum for meetings, records management, public participation in meetings and rules for closed meetings, authority to enter into agreements and the requirement to establish an emergency management program. Part 5 also includes provisions pertaining to council's authority to exercise its powers by either bylaw or resolution and the procedures for making, amending, repealing, quashing, inspecting and filing bylaws. Under Part 5, municipal councils are also required to establish bylaws respecting access to information and protection of privacy.

Part 6 – Financial Matters

This part of the Act sets the rules and requirements relating to municipal financial operation and administration including operational and capital expenditures, budget preparation and approval, development of a financial plan, authorization of expenditures and taxation and changes to the fiscal year. Part 6 also includes provisions pertaining to reserve funds, investments, loans, short term and long term borrowing, grants, other forms of assistance and debt restrictions. This part also includes rules regarding debt restriction, appointment of an auditor, the annual audit (or review engagement process until April 1, 2020) and financial reporting requirements.

Part 7 – Municipal Jurisdiction

This part of the Act includes provisions regarding the general jurisdiction of municipal councils to pass bylaws and provide services, expropriation, management and maintenance of municipal roads, and authority to undertake local improvements. Part 7 also sets out rules and requirements related to the establishment and management of water and sewerage utilities.

Part 8 – Power of the Minister

This part of the Act includes provisions pertaining to the powers of the Minister to order an audit, inspection or inquiry of a municipality, controlled corporation, committee or other body established by council if warranted in specific situations described in the Act. Part 8 also sets out the authority of the Minister to dismiss a council under particular circumstances, and the process for doing so.

Part 9 – Bylaw Enforcement, Offences and Penalties

This part of the Act deals with the enforcement of municipal bylaws including the appointment of enforcement officers, issuing of municipal offence tickets, offences and penalties, powers of inspection and entry, general enforcement powers, municipal orders and remedial actions, and rules regarding fines. Part 9 includes provisions on municipal liability and actions against a municipality.

Schedules

- Schedule A: Extends existing provisions for Victoria Park
- Schedule B: Extends the authority of City of Summerside to operate an electric utility

APPENDIX 3 - KEY RESOURCES FOR COUNCIL MEMBERS

Municipal Resources

- Bylaws and policies
- Organizational chart
- List of your council committees and their roles
- List of agencies, board & Commissions on which the municipality is represented
- Calendar of upcoming meetings, seminars and conferences
- Minutes of previous council & committee meetings
- Current financial plan (operating, capital and five year plan)
- Financial reports (statement)
- Financial audit report
- Contact and emergency numbers for your municipality
- Municipal website

Government of Prince Edward Island Resources

- *Municipal Government Act* and regulations - www.princeedwardisland.ca/mga
- Municipal Affairs information and resources - www.princeedwardisland.ca/en/topic/municipal-governments
    - Includes information about: funding and asset management; municipal administration; municipal elections; municipal finances and reporting; municipal governance, and municipal growth, boundaries and change.

ADDRESS: 3 Brighton Road, PO Box 2000, Charlottetown, PE, C1A 7N8
TWITTER: Municipal Affairs @PEImuniaffairs
EMAIL: municipalaffairs@gov.pe.ca
PHONE: 902-620-3558

Federation of Prince Edward Island Municipalities Resources

- Visit the FPEIM website at: www.fpeim.ca

ADDRESS: 1 Kirkdale Road, Charlottetown, PE, C1E 1R3
TWITTER: @fpeim
EMAIL: info@fpeim.ca
PHONE: (902) 566-1493

APPENDIX 4 – Significant Dates

JANUARY - FEBRUARY

- Begin the preparation of the financial statements toward the end of the previous fiscal year (Jan/Feb)
- Sign up for MAPCO at gov.pe.ca/mapco to get up-to-date assessment information directly (free)

MARCH

Pre-Budget Meeting:

- Meeting must take place at least two weeks before the adoption of the financial plan
- **Notice:** use municipality's standard notice protocols

Tax Rate:

- **Tax rate** – must be submitted to Taxation by **March 31** of the year. The tax rate is set by resolution of council at a public meeting. [Note: Taxation maintains its own database of contact emails – notify them directly of any changes in contact information.]

Financial Plan

- **Financial Plan**– must be passed on or before **March 31** at a public meeting
  - Operating budget
  - Capital budget & 5-year capital plan (2019 – include asset management program)

APRIL

- The municipal budget year begins in **April**
- Financial plan to Province on or before **April 15**

JUNE - JULY

- Audit due back from auditor to the CAO on or before **June 30**
- Audited financial statements to council and Minister on or before **July 15**
- Notice to public of availability of audited financial statements on or before **July 31**

LONGER TERM

- April 1, 2019, the fiscal year for municipalities will run from April 1 of the current to March 31 of the next
- April 1, 2020 - all municipalities will be required to have a full financial audit each year
- December 23, 2021 - an approved emergency management program in place
- December 23, 2023 - land use plans and supporting bylaws in place
- December 23, 2022 - a municipal office that is accessible to all members of the public open for a minimum of 20 hours per week

Notes

Notes

Notes