



TOWN OF MINTO

DATE: November 30, 2017

REPORT TO: Mayor and Council

FROM: Annilene McRobb, Deputy Clerk

SUBJECT: Bill 68 Modernizing Municipal Legislation Act

STRATEGIC PLAN:

12.7 Demonstrate innovation in all aspects of municipal business acknowledging the importance of training, succession planning, transparency, communication and team-based approaches to municipal operations.

12.14 Ensure the Town provides services and facilities accessible to persons of all abilities in compliance with Provincial regulations keeping in mind the needs of the community, ability to pay and best practices of similar municipalities.

BACKGROUND

In the fall of 2015 staff reported to Council on various amendments to the Municipal Act and Conflict of Interest Act being considered as part of a five year review of this legislation. This is when the Province began an initiative to significantly increase oversight of municipal functions through legislation and the Ombudsman. As of January 1, 2016 the Ombudsman assumed responsibility for municipal oversight. It is difficult to determine how beneficial this program has been based on the annual reports provided to Council.

In spring 2016 Council adopted a Code of Conduct, Fiscal Accountability, Transparency and Complaint Policy. These set in place Minto's framework to fit in with the Provincial oversight in anticipation of some of the legislative changes being considered at the time. The policies provide excellent guidance to Council and allowed for an Integrity Commissioner to be appointed if Council felt it was necessary. Rather than appointing a Municipal Ombudsman the new complaint policy allowed for resolution at the Council level before matters were referred to the Provincial Ombudsman.

Early in 2017 staff reported to Council that Bill 68 had received second reading and advised of some of the new provisions being considered including the mandatory appointment of an integrity commissioner with very broad powers. In March Council forwarded comments and concerns to the Province many of which were echoed by the Association of Municipalities. This resulted in some important changes to the legislation before it was adopted. Even so there are additional mandates on municipalities that will result from this legislation.

On May 30, 2017, Bill 68, Modernizing Municipal Legislation Act (the Bill) received Royal Assent. Related to local governance, the various Acts impacted are the Municipal Act, 2001, the Municipal Elections Act and the Municipal Conflict of Interest Act. The Ministry of

Municipal Affairs has advised the legislation will be implemented in phases. Some provisions came into effect with Royal Assent May 30th, while others will apply January 1, 2018 and March 1, 2019. Some provisions of the bill do not have an implementation date.

COMMENTS:

Phase 1: In force Royal Assent (May 30, 2017)

MUNICIPAL ELECTIONS ACT

Term of Council For the 2018 election cycle, the term of Council is December 1, 2018 to November 14, 2022. In 2022 the term of Council commences November 15, 2022.

Contributions Amounts individuals or third party advertisers increases from \$750 to \$1,200. Candidates and their spouses will be limited on the amount they are permitted to contribute toward the campaign.

Head of Office: that, combined, can't exceed an amount equal to the lesser of:

- \$7,500 plus 20 cents for each elector entitled to vote for the office, AND \$25,000

Other elected official: That combined, can't exceed an amount equal to the lesser of:

- \$5,000 plus 20 cents for each elector entitled to vote for the office; AND \$25,000.

Phase 2: In force January 1, 2018

MUNICIPAL ACT, 2001

Changes to council composition:

A member of Council, other than the Mayor, will be permitted to attend County meetings in the absence of the Mayor. Only one member can be appointed per four year term to fulfil this duty, unless the appointed member ceases to be on Council. This will apply to the Deputy Mayor position.

New definition of a meeting:

Meeting shall mean any regular, special or other meeting of a council, of a local board or of a committee of either of them, where a quorum of members is present, AND members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

New closed meeting exceptions:

The current reasons Council may go into closed session are as follows:

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;

- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act. 2001, c. 25, s. 239 (2).

There are four new closed meeting exceptions set out below. These provisions are not contained in MFIPPA as a permitted reason to refuse to disclose a record. A scenario that could result might be that Council properly goes into a closed meeting as defined in the Municipal Act, 2001; however the record might have to be produced on the filing of a Freedom of Information Request and a ruling by the Privacy Commissioner. It is for this reason that staff recommends these additional exceptions be used in a very limited manner.

(h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;

(i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organizations

(j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or

(k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Electronic participation in council meetings

Electronic participation, in open meetings only, is permitted, provided the procedure bylaw sets out the extent and manner in which the member may participate. The member participating electronically cannot be counted in determining quorum. The electronic participation is not permitted for local boards or committees, and would not be allowed for closed session meetings.

Staff is recommending electronic participation in meetings not be permitted for the following reasons:

- Technology disruptions;
- Moving from an open to closed sessions are problematic;
- Accessible format-the method of electronic participation must be accessible;
- Sound issues

- Written declarations of pecuniary interest are not possible

If a member of Council were to be absent for a prolonged period due to illness or other matter beyond their control, a “one-off” arrangement could be considered for a special circumstance. As it stands now Councillors can always read full agendas on-line and view meeting videos to keep up to date.

Closed Meeting Investigations and Reports

If a closed meeting report is received from the Meeting Investigator or Ombudsman, Council must pass a resolution stating how they intend to address the report. We currently share a joint Investigator with the County of Wellington and member Municipalities. Wellington County will be entering into a new agreement with John Maddox as of January, 2018. The County has passed a by-law to appoint John Maddox and to enter into an agreement with him for one year. All the same terms are in the new agreement – essentially nothing has changed except the name going from JGM Consulting to John Maddox.

Phase 2: In force April 1, 2018

MUNICIPAL ELECTIONS ACT

Election campaign advertisements: The definition has been amended to mean an advertisement in any broadcast, print, electronic or other medium that has the purpose of promoting or supporting the election of a candidate.

Mandatory information advertisements: An election campaign advertisement purchased by the candidate or someone on behalf of the candidate must identify the candidate. A candidate must provide the following information to the broadcaster or publisher in writing:

- The name of the candidate.
- The name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the candidate

Broadcasters and publishers are not permitted to run the advertisement unless this information is provided and they must maintain a record of this information for four years which the public are permitted to view.

Third party advertising: An individual, corporate or trade union must register as a third party advertiser with the Clerk of the municipality before incurring any expenses in advertising for a candidate. Third party advertisers have an expense limit and must contain the following information:

- The name of the registered third party.
- The municipality where the registered third party is registered.
- A telephone number, mailing address or email address at which the registered third party may be contacted regarding the advertisement

Broadcasters and publishers are not permitted to run the advertisement unless this information is provided and they must maintain a record of this information for four years

which the public are permitted to view.

A municipality may require someone it believes has contravened third party advertising to discontinue running the advertisement. Third party advertisers must file financial statements and in certain circumstances must provide audited financial statements.

Financial Statements: Municipal Clerks will now review all financial statements file by candidates to determine if there appears to be violations of the spending rules set out in the legislation. If there appears to be a violation, the Clerk will file a report with the Compliance Audit Committee for a review and possible investigation.

Phase 3: In force March 1, 2019

MUNICIPAL ACT

Council Code of Conduct (includes all local boards): A Code of Conduct for Council must be in place by the prescribed timeframe. Minto currently has a Code of Conduct in place for Council, staff and Committees. It will be reviewed prior to the prescribed date to make sure it has all the mandated information the Province requests.

Integrity Commissioner: All municipalities will be required to appoint an Integrity Commissioner as of March 1, 2019. The County of Wellington Clerks discussed appointing a joint Integrity Commissioner similar to a Closed Meeting Investigator. The County Clerk, Clerk of Centre Wellington and the Deputy Clerk of Minto interviewed Guy Giorno, partner in Fasken Martineau law firm. See attached report from County of Wellington Clerk Donna Bryce. Staff recommends hiring of Mr. Giorno as the Town's Integrity Commissioner starting in 2019.

Policy on Staff-Council relations: Staff-Council relations is covered under our current Code of Conduct, this will be reviewed prior to the prescribed date of requirement.

Policy for pregnancy/ parental leave: A policy will be drafted for Councils consideration prior to the prescribed date.

Policy for protection of a tree canopy: The Town of Minto passed a Retention and Management of Trees in Minto Policy on May 17, 2016. There may be prescribed provisions from the Province that must be included.

MUNICIPAL CONFLICT OF INTEREST ACT

Duty of Member: The member shall file a written statement of the interest and its general nature with the Clerk. The Town is already applying this process and will continue.

Action where Contravention Alleged (Integrity Commissioner): Integrity Commissioners can investigate contraventions of the Municipal Conflict of Interest Act. Courts can impose additional penalties if a member is found guilty of contravening the Act including suspension of up to 90 days, and payment of restitution. As a result of the new provisions, Minto's procedure by-law will have to be amended to reflect the legislative changes. Staff will draft any policies and by-laws required and review policies in place in Phase 3, closer to the implementation date of March 1, 2019.

FINANCIAL CONSIDERATIONS:

Financial considerations are unknown at this time mainly because the Town was pro-active adopting Code of Conduct, Fiscal Accountability, Transparency and Complaint Policy before being mandated by the Province. Also the ability to partner with the County on an Integrity Commissioner will help control costs, although if the Town is subject to an investigative complaint it could prove costly in the future.

Monitoring, updating and reporting on new policies, practices and procedures is always an added expense in time, training and administration that is never considered when such comprehensive changes are proposed. Even though the current system worked very well in Minto and the vast majority of cases, the Province has chosen to impose more rules to address what are largely isolated and infrequent issues elsewhere.

RECOMMENDATION:

THAT Council receives the Deputy Clerk's November 30, 2017 Bill 68 Modernizing Municipal Legislation Act Report and that the following be approved:

THAT the Town of Minto enter into an agreement with John Maddox as Closed Meeting Investigator beginning in 2018 for a one year contract (ceasing to operate as JGM Consulting);

THAT the Town of Minto enter into an agreement with Guy Giorno of Fasken Martineau law firm as the Town of Minto Integrity Commissioner starting in 2019.

Annilene McRobb, Dipl M.M., CMO
Deputy Clerk

Attachments:

1. County of Wellington, Closed Meeting Investigators Report
2. County of Wellington, Joint Integrity Commissioner Report