


COUNCIL PRESENTATION


November 6, 2017

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CUNNINGHAM SWAN CAREY OTTELL & BONDAREV

OVERVIEW

1. Municipal government
 - Roles and responsibilities
2. Municipal Conflict of Interest Act
3. Council Code of Conduct


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THE PURPOSE OF MUNICIPAL GOVERNMENT

(Municipal Act, Section 2)

"Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters."

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ROLE OF COUNCIL

(Municipal Act, section 224)

- Represent the public and consider the well-being and interests of the municipality
- Develop and evaluate the municipality's policies and programs
- Determine which services the municipality will provide
- Ensure that administrative practices and procedures are in place to implement council's decisions
- Ensure the accountability and transparency of the operations of the municipality, including senior management
- Maintain the financial integrity of the municipality
- Carry out the duties of council under the Municipal Act or any other Act

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ROLE OF THE MAYOR

(Municipal Act, section 225 and 226.1)

- Act as chief executive officer of the municipality
- Uphold and promote the purposes of the municipality
- Preside over council meetings
- Provide leadership to the council
- Promote public involvement in the municipality's activities
- Foster activities that enhance economic, social and environmental well-being of the municipality and its residents
- Represent the municipality at official functions
- Promote and represent the municipality locally, nationally and internationally
- Carry out the duties of the head of council under the Municipal Act or any other Act

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ROLE OF ADMINISTRATION

(Municipal Act, section 227)

- Implement council's decisions
- Establish administrative practices and procedures to carry out council's decisions
- Undertake research and provide advice to council on the municipality's policies and programs
- Carry out other duties required under the Municipal Act or any Act
- Carry out other duties assigned by the municipality
- Policy on council/staff relations will be required in future (s. 270(1)2.1)

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ROLE OF THE CHIEF ADMINISTRATIVE OFFICER

(Municipal Act, section 229)

- Exercise general control and management of the affairs of the municipality
- Ensure the efficient and effective operation of the municipality
- Performing such other duties as are assigned by Council

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ROLE OF THE CLERK

(Municipal Act, section 228)

- Record, without note or comment, all resolutions, decisions and other proceedings of council
- If required by any member present at a vote, record the name and vote of every member voting on any matter or question
- Keep the originals or copies of all by-laws and minutes of the Council proceedings
- Perform the other duties required under the Municipal Act or under any other Act
- Perform such other duties as are assigned by the municipality

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ROLE OF CHIEF BUILDING OFFICIAL

(Building Code Act, section 1.1(6))

- Establish operational policies for the enforcement of the Building Code Act and the building code
- Co-ordinate and oversee the enforcement of the Building Code Act and the building code
- Exercise powers and perform the other duties assigned under the Building Code Act and the building code
- Exercise powers and perform duties in accordance with the standards established by the applicable code of conduct

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Municipal Conflict of Interest Act

- Governs individual councillors, not the municipality
- Duty of each councillor to comply with the Act
- Applies when acting as councillor or member of committee or local board
- Failure to comply can result in the following:
 - Council seat declared vacant
 - Councillor disqualified from holding office for up to 7 years
 - Councillor required to make restitution to any person suffering loss or the municipality

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Municipal Conflict of Interest Act

- Any pecuniary interest, direct or indirect, in any matter under consideration by council, committee or local board
 - Any financial or monetary interest
 - The pecuniary interest can be positive or negative
- A pecuniary interest of the following persons is an indirect interest
 - Councillor's parent, spouse, same sex partner or natural, adopted or step-child
 - Councillor's employer or business partner
 - A private corporation in which the councillor is a shareholder, director or senior officer
 - A public corporation in which the councillor has a controlling interest

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Municipal Conflict of Interest Act

- Disclose the nature of your interest prior to any consideration of the matter at the meeting
- Not take part in the discussion or vote on the matter
- Not attempt in any way before, during or after the meeting to influence the voting
- If in closed meeting, immediately leave the room during the discussion
- If absent from the meeting, declare the conflict at the next meeting


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Municipal Conflict of Interest Act

Exemptions


- Having a pecuniary interest in common with electors generally (e.g: property owner, utility customer)
- Receiving an allowance, honorarium, remuneration, salary or benefit as a member of council or as a member of the volunteer fire department
- Having a pecuniary interest that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor

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CODE OF CONDUCT


- Currently no obligation to have a Code
- Under the recent amendments every municipality will be obliged to have a Code by 2019
 - No prescriptive elements assigned
 - But regulations may develop mandatory components
 - Some consistency across the province and common definitions would be beneficial (non-MCIA conflict of interest definition for example)
- Take this opportunity to review and update your code of conduct
 - Make sure the investigation process is clear
 - What are the goals of the Code?
- Integrity Commissioner will be mandated
 - Applying the Code, policies and procedures
 - Investigations of MCIA
 - Advice to Councillors about the Code, policies, MCIA and ethical behaviour

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CODE OF CONDUCT


- Statements of Principle of the HCM Code of Conduct
 - Encourage high standards of conduct
 - Must serve and be seen to serve in a conscientious manner
 - Avoid conflicts of interest, both apparent and real
 - Public and private life are identified – must promote public confidence
 - Transparent and accountable
 - Abide by the law
- Conflict of Interest
 - Not defined in the Code
 - Must include Municipal Conflict of Interest Act (captured by 1.6, abide by laws)
 - Because MCIA is already included, the intent must be to have a broader definition (this is supported by including "both apparent and real" in the section)
 - Without a definition how are councillors supposed to understand their obligations?
 - Both apparent and real in extremely broad

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CODE OF CONDUCT


- Conflict of Interest
 - What non-pecuniary interests are included?
 - The Integrity Commissioner decides after the fact – the Code is not designed to guide behaviour
 - Consider
 - A situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the councillor's self-interest and public interest
 - Can the decision be made fairly or will outside pressures to decide in favour of friends and family prevent an independent decision
 - What influence will be perceived by the reasonable outside observer – can the influence be ignored by the decision maker?
 - Is the interest shared with many members of the community
 - Where interests are personal or the impact is personal the potential for the perception of conflict is greater
 - Also consider
 - Bias is not a conflict
 - Having an opinion or view point is not a conflict
 - Being pressured by outside influences is not a conflict – provided no

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CODE OF CONDUCT


- The Conduct to be Observed
 - At meetings (s. 3)
 - Civil behaviour / In accordance with Procedural by-law
 - Conduct respecting others (s. 4)
 - Treat everyone respectfully, appropriately – no abuse or harassment
 - No indecent or abusive language – no discrimination
 - Conduct respecting staff (s. 5)
 - Respect neutrality
 - Not impugn the professional reputation of staff – show respect
 - Not compel staff to engage in partisan politics
 - No threats, intimidation or coercion
 - Gifts and Benefits (s. 6)
 - Not accept gifts associated with the performance of your duties
 - Confidential information (s. 7)
 - No disclosure of any confidential information by any means
 - Municipal Property (s. 8)
 - Not waste, abuse or expend public resources frivolously

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CODE OF CONDUCT

- The Conduct to be Observed
 - Election Campaigns (s. 9)
 - Comply with the Municipal Elections Act
 - No use of municipal property for the election
 - Improper Use of Influence (s. 10)
 - Only use position for municipal purposes
 - No use of the position to influence a decision for the benefit of the member or their parent, child, spouse, staff member, friend, associate or business relation
 - May request lawful exemption from any policy
 - Reprisals and Obstruction (s. 12)
 - Comply with investigations
 - No reprisals or threats of reprisals
 - No obstruction of an investigation

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FAQ

- What is the distinction between a Councillor and a Resident?
 - Councillors represent the municipal corporation
 - The best interests of the municipal corporation govern
 - Actions of a councillor may create liability for the corporation
- How does a Councillor direct staff?
 - Council passes policy
 - Staff administer policy direction from Council
 - All directions to staff must be through senior administration
- What if Council disagrees with a *Planning Act* recommendation from staff?
 - Council must appreciate that the recommendation is from a professional and the recommendation is not subject to the direction of Council or senior staff
 - Defer and get a 2nd opinion
 - Change the planning documents
- What is Council's role in enforcement?
 - Council sets policy
 - Council does not determine who is prosecuted, how enforcement is undertaken or what penalty is appropriate

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