



City of
Peterborough

To: Members of General Committee

From: John Kennedy, City Clerk

Meeting Date: March 26, 2018

Subject: Report CPCLK18-005
Bill 68, Modernizing Ontario's Municipal Legislation Act

Purpose

A report to update Council on the changes introduced by Bill 68, **Modernizing Ontario's Municipal Legislation Act** (Act).

Recommendation

That Council approve the recommendation outlined in Report CPCLK18-005, dated March 26, 2018, of the City Clerk, as follows:

That the report of the City Clerk regarding Bill 68, **Modernizing Ontario's Municipal Legislation Act**, be received for information.

Budget and Financial Implications

There are no direct budget or financial implications as a result of the recommendation at the present time. There will be costs associated with the Integrity Commissioner and funds will be included in the draft 2019 budget.

Background

The changes made in Bill 68 are the result of amendments the province wanted to make in several acts including the **Municipal Act**, the **Municipal Elections Act**, the **City of Toronto Act**, and the **Municipal Conflict of Interest Act**.

The Act has three main themes, being:

1. Accountability and Transparency
2. Municipal Financial Stability
3. Responsible and Flexible Municipal Government

The changes made to the various acts are significant and the purpose of this report is to update Council on the changes that most impact Council at the City of Peterborough. A full copy of the changes can be accessed via the link:

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4374

On May 30, 2017, Bill 68 received Royal Assent and the changes are being implemented in a phased approach.

Upon Royal Assent a number of changes came into force and effect and these include:

- a) Power of Entry – Municipalities have the ability to enter private properties that adjoin municipal land for the purpose of property maintenance.
- b) Tax Bills – Permits municipality to send tax bills electronically if the taxpayer wishes to receive them in that manner.
- c) Tax Sale – Allows the optional registration of a tax arrears certificate in the second year of arrears (as opposed to the third year). Lands vested in the Crown cannot be sold under tax sale if the Crown intends to use the land for crown purposes.
- d) Climate Change – Provides for long-term planning for energy use, including consideration of energy conservation, climate change and green energy and gives municipalities the power to enact by-laws related to climate change.
- e) Changes to the **Municipal Elections Act** – Changes to contribution limits, self-funding limits, and changes to the term **Municipal Elections Act** of office (effective 2022). A separate report on changes to this Act is being presented to Council at the meeting on March 26, 2018.

The following changes came into effect on January 1, 2018:

- a) New definition of a meeting
- b) New Closed Meeting exceptions
- c) Electronic participation in meetings
- d) Tax Sale – Municipalities will no longer be able to apply for payment of out of court on excess funds realized after a successful tax sale. Tax sale extension agreements can now be enacted without the passage of a by-law.

The following changes will come into effect on March 1, 2019:

- a) Code of Conduct for Council
- b) Integrity Commissioner
- c) Policy on Staff-Council relations and Policy for pregnancy/parental leave for Council members
- d) Policy for protection of tree canopy

The following change was proclaimed on March 1, 2018 but a municipality cannot pass a by-law until January 1, 2019:

- New investment options and opportunities - Rather than just being able to invest in a predetermined list of eligible investments based on credit quality as set out by the province, qualifying municipalities will have greater flexibility to invest in securities as long as they meet the prudent investor standard through the use of a Council-appointed Investment Board.

Phase 1: Changes Effective January 1, 2018

a) New Definition of a Meeting

The previous definition of meeting in the **Municipal Act** was “any regular, special or other meeting of a council, of a local board, or of a committee of either of them.” This definition has been amended as follows:

“meeting means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- a) a quorum of members is present; **and**
- b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.”

This new definition will provide clarity on what constitutes a meeting

b) New Closed Meeting Exceptions

The **Municipal Act** had provided exceptions closed meetings under Section 239(2)(a)-(g) as well as for issues related to Freedom of Information requests and for educational and training sessions.

Changes made on January 1, 2018 allow municipalities go into Closed Meetings for four additional discretionary items under 239(2)(h)-(k) as follows:

- (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 organization.
- (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.
- (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.

Although exceptions (h)-(j) are very clear about what can be discussed in Closed Meetings it is (k) that raises concerns because of its lack of clarity. The Association of Municipal Clerks and Treasurers of Ontario did not support the inclusion of (k) and advised that "It [k] is too broad, too prone to abuse, and too likely to reduce the level of transparency that currently exists in municipalities."

Council needs to exercise caution with any use of (k) and it will likely be through the courts and subsequent Closed Meeting investigations that clarity is provided.

c) Electronic Participation in Meetings

Through Bill 68, meetings can now involve electronic participation, if the municipal Procedure By-law permits it. The City of Toronto has had the ability to have e-participation in meetings since 2006, but has not yet chosen to permit it.

The Act permits members to participate electronically and vote in open sessions of meetings, but they cannot be counted for quorum. E-participants are not permitted to participate in Closed session meetings.

Electronic participation in meetings is advantageous where attendees represent a physically large area and where travel/accommodation costs are significant. If Council is interested in having e-participation, the Procedure By-law will need to clearly identify how it is used, in what meetings it can be used, what form the participation takes (telephone, video-conferencing etc...) and appropriate technology would have to be available in Council Chambers.

Phase 2: Changes Effective March 1, 2019

a) Code of Conduct for Council

As of March 1, 2019, it is mandatory that all Councils have a Code of Conduct, where previously it had been an option.

One additional change that comes into effect at this time is that the City will be required to maintain a Conflict of Interest Declarations Registry. Declarations of interest will need to be in writing and it is anticipated that the Clerk's Office will provide a form for such purposes. These documents will be made available for public viewing, likely in an electronic format.

Council members or members of local boards will be prohibited from using their office to attempt to influence decisions or recommendations being considered by employees or officers if the member has a pecuniary interest in the matter.

b) Integrity Commissioner

Similar to the Code of Conduct, Integrity Commissioners (IC) had previously been an option but will be required effective March 1, 2019. Municipalities may hire their own IC, share one with other municipalities, or have one on retainer.

ICs cannot launch investigations on their own initiative, and must respond to written complaints. The municipality must provide indemnity to their ICs.

The ICs are also intended to provide advice and to educate the public and Council on the Code of Conduct and the **Municipal Conflict of Interest Act**.

During an election period the activities of the IC are restricted. No reports on contraventions can come forward between nomination day until after voting and no investigations can be undertaken during this time. Investigations underway will be halted during this same time period.

When an investigation into a violation of the **Municipal Conflict of Interest Act** is completed the IC may decide to apply to a judge to determine whether the member contravened the Act. If the IC does not apply to a judge, the individual who made the complaint may do so. A complainant must be a qualified elector in the municipality or a person 'demonstrably acting in the public interest'. Any investigations into contraventions of this Act must be made within 6 weeks of the applicant becoming aware of the contravention.

Judges will also have additional powers related to the **Municipal Conflict of Interest Act**. They may reprimand the member, suspend remuneration for up to 90 days, declare the member's seat vacant, disqualify a member for a period of not more than 7 years from the date of the order, if the contravention resulted in personal financial gain they may require the member to make restitution to the party suffering the loss.

c) Policies on Staff-Council Relations and Pregnancy/Parental Leave for Council Members

Bill 68 requires Councils to adopt two new policies – one on relations between staff and Council members, and the second to provide for pregnancy and parental leave for Council members. The purpose of the first policy is to ensure a professional and

respectful relationship between Council and staff. The second policy is intended to ensure that Council members who have children while in office and take leave, will not require authorization from Council as currently required by the **Municipal Act**.

d) Policy on Protection of Tree Canopy

In October 2017, Council received Report USDIR17-008 "Introduction of a Tree By-law 17-120 which satisfies the policy requirement. Therefore no further action is required to meet the Bill 68 requirements for this item.

Next Steps

Staff will be reviewing any policies, procedures and by-laws impacted by Bill 68. Reports will be brought forward to Council with proposed changes as a result of Bill 68.

Summary

The changes made in Bill 68 are the result of the province revising a number of existing acts to improve accountability and transparency, and responsible and flexible municipal government. The provisions in Bill 68 are being phased-in, with some provisions currently active and the remainder coming into effect in March of 2019.

Submitted by,

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Clerk

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