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Introduction 2.1

This Section has been prepared to assist local government elected officials in carrying out their role in public office and to help them have a better understanding of the Municipalities Act. It presents an overview of the duties and responsibilities of municipal council members and is intended to be used for reference purposes only. It is not meant to replace provincial legislation.

Basis for Municipal Government 2.1.1

Canada’s system of government has three levels - federal, provincial and municipal. The federal and provincial governments have their powers set out in The Constitution Act, 1982. Municipalities are a creation of the province and have been given their authority from the province.

Municipalities are an important part of the Canadian structure of government. Municipal powers are devolved from provincial governments through legislation, such as the Charlottetown Area Municipalities Act, Municipalities Act, and the City of Summerside Act. It is important to recognize that municipalities may only provide the services which they are specifically granted under legislation.

The Prince Edward Island municipal governments have been established by way of three principal pieces of legislation:

- Charlottetown Area Municipalities Act
- City of Summerside Act
- Municipalities Act

While the first act applies specifically to the City of Charlottetown and the towns of Stratford and Cornwall, the second act relates only to the City of Summerside. The third act, the Municipalities Act, passed by the Province in 1983, provides direction for the operations of 71 incorporated towns and communities encompassing approximately 26 percent of the population and 27 percent of the land mass. While many provinces are organized into various categories of municipal units, PEI continues to have large areas that are unincorporated and thus not represented by a municipal government.

Although established at different times, these three acts share common characteristics. Each outlines a council/committee style of decision making, and sets forward the authority that may be exercised by the municipality.

Regardless of their size, the legislation under which they are established, or their classification, it is generally held that all municipalities share three characteristics:

- They are corporate bodies with clearly defined legal boundaries
They are governed by locally elected officials
They have the authority to levy taxes in order to raise revenue for the provision of services

Under the Municipalities Act, an area may be incorporated as either a town or community. One of the principal differences between a town and a community is the manner in which the annual budget of the municipality is approved. In a town, the council has full authority to establish a budget. In a community however, the budget, while prepared and recommended by the council, can only be approved by the residents. For this reason, each community is required, under Section 55 of the Act, to hold an annual meeting in March for residents to consider the proposed budget and other agenda items. Beyond this difference and differences in election procedures, towns and communities operate in virtually the same fashion.

While the key powers and duties of a municipality are provided for in legislation such as those listed under section 30 of The Municipalities Act, many other acts can affect local governments. Elected officials of a municipality may wish to become familiar with this and other statutes, although this manual will be limited to the legislation contained in The Municipalities Act.

It is only at the local level that citizens can decide for themselves the nature and extent of services for which they are willing to pay. Citizens of an area inevitably know their own needs much better than anyone else does.

It is a role of a municipal council to identify those needs, to decide which of the needs are most important, how best to provide for them, and how to raise the necessary money to pay for them. In doing so, the Council is making a political judgement - it is deciding how to allocate scarce resources. The importance of municipal government is that these choices can be made locally by elected representatives who can easily be contacted by their constituents. Their authority extends only within the municipal boundary as determined by the provincial government. Well-run municipal councils can provide the nucleus around which a community can focus.

**Municipal Legislation 2.2**

**Principles and Purposes**

The Municipalities Act, Charlottetown Area Municipalities Act and the City of Summerside Act are all “prescriptive” legislative documents indicating the powers and authority extended to municipal governments. Municipalities are considered corporations and have the powers, rights, and privileges required to carry out or administer their activities as directed by legislation.
Municipal legislation states in general terms the jurisdiction of council and provides the legal structure and framework for municipal councils to provide governance and to make decisions at a local level. Legislation provides powers for actions such as the creation of bylaws or the ability to levy taxes.

The purpose of a municipality is to provide leadership with regards to:
- peace, order and good government;
- services;
- any other matter within the jurisdiction of the municipality.

At all times, it is important to be mindful that municipalities are accountable to the electorate and should encourage and enable continuous public participation in the governance process.
Structures of Municipal Councils

The legislation uses the term “municipality” to describe either an area incorporated as a city, town, community, or resort community. Should a particular section apply only to a certain type of municipality, the legislation will indicate the specific type of municipality.

Every municipality shall have a council consisting of: in the case of the City of Charlottetown, a mayor and ten councillors and in the City of Summerside, a mayor and eight councillors. Within the towns, the council shall consist of a mayor and six councillors; in the case of a community, a chairperson and not fewer than three or more than six councillors. Councils that had greater or fewer than seven councillors prior to this Act are according to legislation, permitted to maintain that number. In a resort municipality at least two of the councillors shall be persons who are not temporary residents.

The term of office for an elected official under the Charlottetown Area Municipalities Act or the City of Summerside Act is four years. The term of office of a mayor, chairperson or councillor governed under the Municipalities Act is three years. All elected representatives are eligible for re-election at the end of the term of office. The council is the governing body of the municipality. The qualifications for nomination and for holding office as a mayor, chairperson or councillor of a municipality are that the nominee is:

- not less than eighteen years of age;
- a Canadian citizen; and
- resident for a period of one year preceding the date of the nomination.

Where a mayor, chairperson or councillor ceases to be a resident in the municipality in which he or she holds office, that person shall, within thirty days thereof, vacate office.

Should a mayor, chairperson or councillor be continuously absent from the municipality for more than three calendar months, or absent from the regularly scheduled meetings of the council for more than three successive months without being thereto authorized by a resolution of the council, the council may, except where such absence is occasioned by illness, declare his or her office to be vacant.

The council shall take office two weeks following their election or any such later date as may be approved by the Minister.
Powers and Duties of the Council 2.4

Certain powers of a council are discretionary. This authority will be noted in the legislation as “may”, which means council can decide whether or not to carry out that particular function. Other duties are mandatory, which means that council must perform the action required and are read as “shall” in pertinent legislation.

General Duties of Councillors 2.4.1

These duties will be expanded upon in section 4.

Legislation sets out that a council shall

- meet at least once a year; or in the case of the Cities and the towns of Cornwall and Stratford, at least a minimum of 10 times;
- appoint an administrator should the position be vacant;
- appoint an auditor should municipal budgetary expenses exceed $50,000;
- determine the rate of municipal taxation necessary to provide municipal services;
- prepare annual estimates of all sums required for municipal services for the fiscal year, which shall be presented at the annual meeting of the residents where required under municipal legislation; and
- conduct elections and fill vacancies on council;

General Duties of the Mayor or Chairperson 2.4.2

In addition to performing the duties of a councillor, mayors and chairpersons shall preside, when in attendance, at council meetings;

The mayor or chairperson is a member of all council committees.

Other Legislated Duties of Mayors or Chairpersons 2.4.3

At times various other actions may be required by the heads of council:

- along with the Administrator, sign all bylaws of the municipality;
- request the Administrator to call a special meeting;
- call a public meeting when authorized to do so by council or after having received a petition requesting one;
• sign the securities along with the Administrator unless another person has been designated to do so.

**Deputy Mayor/Deputy Chairperson 2.4.4**

The mayor or chairperson may appoint a councillor as deputy mayor or vice-chairperson who shall, during any absence or illness of the mayor or chairperson, exercise the functions of the head of council.

A councillor appointed as a deputy mayor or deputy chairperson acts as the mayor or chairperson if:
• the mayor or chairperson is unable to perform his or her duties; or
• the office of mayor or chairperson is vacant.

**Council Remuneration 2.4.5**

The council may by bylaw provide for payment to the mayor or chairperson and to councillors of annual salaries in such amounts as may be specified in the bylaw; and such additional amounts as may be specified in the bylaw as allowances for expenses incident to the discharge of their functions.

**Council Committees 2.4.6**

A Mayor or Chairperson may appoint standing committees from among the members of the council comprised of any number of council members that are needed to accomplish the task before them.

The council may by resolution appoint special committees, chaired by a council member, for any particular purpose which shall report to the council on the matters committed to them.

It is important for the Mayor or Chairperson to establish for standing committees and council for special committees to determine:
• the purpose of the committee;
• the minimum frequency of committee meetings;
• the procedure and conduct of meetings; and
• how committees shall report and make recommendations to council.
Council and Council Committee

Meetings 2.5

Municipal Legislation requires councils to hold meetings in public. Committees of Council however, may conduct meetings behind closed doors. Anyone may be present at council and open council committee meetings, and cannot be expelled from them except for improper conduct.

Councils shall hold meetings as required by legislation and shall, by resolution, fix the date, place and time of regular meetings. Council may also hold special meetings at the call of the mayor or chairperson, and the mayor or chairperson shall call a special meeting when so requested in writing by not less than half of the councillors currently holding office.

Actions of councils are not effective unless authorized or adopted by resolution or bylaw at a duly constituted public meeting of Council. Along with this, any action of a council committee is not effective unless it is authorized or adopted by a resolution at a properly constituted meeting of council. No meeting can be held and no act of council is valid unless it has been adopted at a meeting of council where a quorum is present. A quorum is the majority of members of council.

The quorum at any council meeting is:
• the mayor or chairperson or, in his absence, the deputy mayor or vice-chairman; and
• at least one-half of the councillors then holding office.

No business shall be conducted at any meeting of a council unless a quorum is present.

Each councillor has one vote. The mayor or chairperson shall vote on any matter before council only for the purpose of breaking a tie.

The office of mayor, chairperson or councillors shall be declared vacant upon a resolution of council to that effect if the holder of that office has missed three consecutive meetings of the council without just cause. Where a member of council dies, resigns or becomes disqualified to serve, the seat shall be deemed to be vacant and shall be so declared by the council.

Scheduling Meetings 2.5.1

The Cities and towns of Cornwall and Stratford shall hold regular monthly meetings as determined by council. The remaining towns and communities shall hold at least one meeting each year. Should a council decide to hold additional regularly scheduled council meetings it shall specify the dates, times and places by resolution.

A council may hold special meetings at the call of the mayor or chairperson and the mayor or chairperson shall call a special meeting when so requested in writing by not less than half of the councillors for the time being holding office.
The council of a community may hold a special meeting at any time after giving notice in of the time, date and place of the meeting published on at least two occasions in a local paper circulating in the community seven days in advance of the meeting, indicating the purpose of the meeting. No business other than that stated in the notice is to be transacted at a special meeting.

**Notice of Meetings** 252

Notice to members of council of a regular or special council meeting shall be provided by the administrator. The administrator may provide this notification personally at the usual place of business or residence of the member, or if requested, by telephone, regular mail, voice mail or email.

**Conflict of Interest** 2.5.3

It is important to note that members of municipal council cannot derive any profit or financial advantage from a position as a member of Council, other than remuneration. Should a member of Council have any pecuniary interest in or be affected by any matter before the council, the member shall declare an interest, and abstain from the voting and discussion of the matter before council.

**Oath of Office** 254

All members of Council must take an official oath of office in a prescribed form before carrying out any power, duty or function as a member of Council.

**Voting** 255

Each member of Council has one vote each time a vote is held during a council meeting where he or she is present. All questions are decided by a majority of votes, however, Council may put procedures in place requiring a greater percentage for all or certain situations or resolutions. Each council member votes on all matters put before Council unless legislation permits or requires the member to abstain from voting.

The mayor or chairperson shall vote only for the purpose of breaking a tie.

**Rules of Parliamentary Procedure** 256

Following parliamentary procedure rules during council meetings will help in the decision making process of councils. The main objectives of parliamentary procedure rules are to guard against hasty, ill-considered actions, to give each member an equal right to be heard, to determine the will of the majority, and to protect the rights of the minority. For further information about parliamentary procedure municipalities may wish to obtain one of the following publications:
Bylaws 2.6

Areas of Jurisdiction 2.6.1

A council may make bylaws that are considered expedient and are not contrary to municipal legislation or other provincial legislation or regulations for the peace, order and good government of the municipality, the provision of municipal services and any other matter within the jurisdiction of the municipality. Within its boundaries, and within the authority granted under the appropriate legislation such as the Municipalities Act, councils can enact bylaws which have all the force of law.

Bylaw Procedures 2.6.2

Municipal legislation sets out the procedure for passing municipal bylaws, with the exception of planning documents, where the process is governed by the provisions of the Planning Act. Every proposed bylaw must have two distinct and separate readings. It must not have more than one reading per meeting.

A bylaw is made if:

- it is read and formally approved by a majority of the councillors on two occasions at meetings of the council held on different days;
- after being read a second time it is formally adopted by resolution of the council; and
- it is signed by the mayor or chairperson and the administrator, and formally declared to be passed, and sealed with the corporate seal of the municipality.

Where a bylaw is made

- the minutes of the meeting shall record the name of the bylaw and the fact that it is passed;
- a copy of the bylaw bearing the signature of the mayor or chairperson and the administrator and engrossed with the
municipal seal shall be entered in the register of bylaws retained by the administrator;

- a copy of the bylaw certified by the administrator and bearing the municipal seal shall be filed with the Minister within seven days of the day on which the bylaw was passed.

## Disqualification of Members of Council 2.7

### Reasons for Disqualification 27.1

A member of Council may be disqualified from Council if any of the following situations occur:

- when nominated the member was not eligible for nomination or election to Council;
- he or she ceases to be eligible for nomination or election to Council;
- he or she is absent from 3 consecutive council meetings without just cause;
- he or she ceases to reside in the municipality.
Municipal Administration 2.8

One of the most important aspects of good municipal government is an effective working relationship between Council and the administration. Understanding how the administration of your municipality works, assists municipal council members in carrying out their roles.

The administration or the employee(s), look after the day to day operations of the municipality. The key role of Council is to provide leadership and set policy. The administrator is a policy advisor and ensures Council’s policies are carried out. It is important for staff to keep Council informed and up to date on current and impending issues. The experience and knowledge of municipal administration and staff may enable council members to do their job more efficiently.

Administrator 2.8.1

Municipal councils are required by legislation to establish the position of Chief Administrative Officer or Administrator for the municipality. Every council shall appoint a CAO or an administrator who is not a member of council and who shall be the chief administrative officer of the council. The council shall not dismiss the CAO or administrator except for just cause. A CAO or administrator may be styled as the manager or clerk of the municipality. The council shall notify the Minister of the name and business address of the CAO or administrator. A CAO or administrator is required to perform the duties and functions required by legislation and other duties that may be assigned by Council.

Duties of the Administrator 2.8.2

The administrator shall:

☐ attend all meetings of the council and record in a book, without note or comment, all resolutions, decisions and proceedings of the council;
☐ keep the minute books, documents and financial records of the council and maintain a register containing the originals of all bylaws adopted by the council;
☐ be the custodian of the corporate seal of the municipality;
☐ notify all members of the council of meetings of the council;
☐ collect and receive all money of the municipality;
☐ open an account in the name of the municipality in a chartered bank or other financial institution approved by the
council and deposit in that account all money received by him or her on account of the municipality;

☐ co-sign all cheques of the municipality with the mayor or chairperson or his or her designate;

☐ as soon as possible after the end of the fiscal year, prepare a detailed statement of the finances of the municipality and submit it, when audited, to the council;

☐ perform such other duties as the council assigns to him or her; and

☐ in specified municipalities be the senior policy advisor to the council.

Upon the approval of Council, an administrator may delegate some or all of functions to any employee of the municipality. An example would be the delegation of signing authority to a chief financial officer or assistant administrator in the absence of the administrator.
Finance 2.9

One of the purposes of a municipality is to provide wise stewardship of public assets. Much of the time spent as a municipal councillor involves making financial decisions that affect the community. The greatest challenge of a municipal council is to make the best use of public money and ensure the residents are getting the most for their tax dollar or value for money.

Budgets 2.9.1

Each year, municipal councils are required to adopt a budget for the municipality on or before April 1st. It is important, therefore, that Council carefully consider the yearly expenditures, taxation, and services desired by the residents.

Operating Budget
The operating budget is the estimated amount of yearly expenditures for the operations of the municipality. The operating budget will also include the estimated amount of annual revenues from taxes, providing services, and any grants the municipality receives. In the case of a community, each resident may exercise a vote at the annual general meeting on the estimates for expenditures developed in the operating budget. The estimates for expenditures are approved if they receive the approval of a majority of the residents present and voting at the meeting.

Capital Budget
The capital budget is the estimated amount of expenditures for capital assets of the municipality. The capital budget will also include the estimated amount of revenue generated through financing from internal sources, other government financing, and long-term borrowing. Capital budgeting is a critical planning tool for municipalities. It allows municipalities to provide for the necessary infrastructure to maintain or enhance future service levels.

Deficit Budgeting
The council shall not project a deficit in its estimates and budget for any fiscal year in respect of expenditures other than capital expenditures.

Borrowing 2.9.2

A council may raise money by way of loan or the issue of debentures for the purpose of providing the services. The council of a community shall not borrow money for capital expenditure unless the proposed borrowing is approved by the residents at an annual meeting or a special meeting called for that purpose. No council may borrow money for capital expenditure if the result of the borrowing would be to increase the debt of the municipality to an amount in excess of ten percent of the current
assessed value of real property in the municipality. The percentage amount may exceed the specified limits in exceptional circumstances with the approval of the Minister. Nothing precludes a council from borrowing money to be used on an interim basis to finance current operations.

Financial Reporting and Auditor 2.10

Financial Reporting 2.10.1

Each year, the municipality must prepare annual financial statements of the municipality using the general accepted accounting principles (GAAP) for municipal governments as outlined by the Public Sector Accounting Board (PSAB). The auditor's report and audited financial statements, Municipal Financial Information Return (MFIR), and approved budget are to be submitted to the minister on or before April 1st each year.

The Municipal Financial Information Return (MFIR) is a standard set of year-end reports which capture financial and statistical information for each municipality in the Province.

For more information on municipal financial reporting, please visit www.gov.pe.ca/go/municipalfinancial.

Auditor 2.10.2

Every council shall appoint an auditor who shall audit the financial statements of the municipality. The auditor shall be a person qualified to practice as a public accountant under the Public Accounting and Auditing Act. The auditor shall make a report to the council on the financial statements of the municipality and shall state in their report whether, in their opinion, the financial statements referred to therein present fairly the financial position of the municipality and the results of its operations during the immediately preceding year, in accordance with generally accepted accounting principles applied on a basis consistent with that of the previous year.

The council of a community may, by resolution passed at the annual general meeting, dispense with the requirement to appoint an auditor if the budgeted expenditures of the community are less than $50,000.00. Should such a resolution be passed, the administrator of the community shall notify the Minister in writing.

The council shall, on or before April 1st each year, submit to the Minister a copy of the financial statements of the municipality, the auditor’s report, the approved budget for the current fiscal year, and such other information as the Minister may require.
Where a council fails or neglects to appoint an auditor as required by section 27, the Minister may appoint an auditor for the municipality and the council shall pay their fees and expenses.

**Policies and Policy Manuals 2.11**

As members of council are the policymakers of a municipality, their role is to establish policies for the operation of the municipality. Some situations come before councils time and time again, such as requests for copies of the minutes once approved. To simplify these matters, many councils have found it beneficial to have in place a policy manual to address the day to day issues that arise, eliminating the need for those issues to come before Council. Policy manuals can be as simple or as complicated as Council chooses.