

Ten Tips for New Municipal Council Members

Authors: John Stefaniuk, K.C.

published 02/19/2015

In over twenty-five years of advising, working with and appearing before municipal councils, I would like to think that I have made at least some useful observations. Here is a list of ten pointers on subjects which seem to cause the most issues. Although they are directed to new members of council, I hope that they are a useful reminder to returning council members and administrators as well.



1. Know your duties: The main duties of a member of council are to act in good faith, in the best interests of the municipality and to keep confidential information confidential. This supersedes any duty to your ward or any individual or group of residents. If that is not enough, think of the personal liability that you may expose yourself to if you fail to meet these duties.

2. Know your legislation: Municipalities are often described as “creatures of statute”; the only powers that they have are those set out in provincial legislation and those implied or necessarily incidental thereto. If you do not have a grasp of the basics, you will not understand what the municipality can, cannot, must and must not do. Take at least a brief read through *The Municipal Act* and *The Planning Act* to understand how the pieces fit together and why you are doing what you are doing. It is all available on-line. The Province of Manitoba publishes some very useful guide books for council members and administrators, as do other provinces - just do not always take them as gospel.

I am reminded of an appearance on a livestock conditional use application. I was referring council members to the criteria set out in *The Planning Act* that the council must apply in making its decision at a conditional use hearing. I was a bit dumbfounded when one long-serving council member interrupted to ask of me, “What Planning Act is that?” Don’t be that council member.

3. Understand and avoid conflicts of interest: The Municipal Council Conflict of Interest Act (another Act for you to know) defines what is a conflict of interest for its purposes. Know how and when to report a conflict and what to do. Attempting to influence in any way any decision in which you have a conflict of interest can lose you your council seat. There may be other types of conflict of interest that are not covered by this Act, but which, if ignored, can indicate bad faith and could render decisions subject to challenge.

4. Meetings are public: All council and committee meetings are public. The Municipal Act sets out some very limited exceptions in which meetings may be held in camera. Even then, the resolutions have to be made in public session. Sensible, open municipalities post notices of meetings, agendas, minutes and more online.

5. Information is public: All information received, sent, stored or collected by a municipality is public information unless it falls within the limited exceptions under The Freedom of Information and Protection of Privacy Act. Yes, this applies to email and electronic records too. The only thing that wrongfully withholding public information will get you is a nasty public report from the Provincial Ombudsman. Leave the decision to your duly appointed privacy officer (often the CAO), who may choose to consult you or experts on sensitive items. And yes, you need to have a privacy officer.

6. Learn how to hold a hearing: A municipal council's public hearing hat is different than its governance hat. Hearings are formal and subject to rules of procedural fairness. Decisions are made based only on the information shared at the hearing and available to all participants. Understand what decision you have to make and what legislative criteria must be followed. Set and follow a good process. Oh, and make a decision; there are very few circumstances where a decision cannot be made right after the hearing and, unlike whiskey, the submissions do not get any better with age. Do this consistently and save yourself the prospect of court challenges.

7. Let employees do their jobs: The CAO reports to council. All other employees report to the CAO. In the words of Alberta Municipal Affairs, "Staying out of the day-to-day operation of the municipality allows councillors to concentrate on policy-making and program monitoring. Councillors should work with the CAO to keep informed on what the municipality is doing and will depend on the administrator to provide information so that they can make sound decisions." Effective councils set policy; they do not micro-manage.

8. Delegate: There are a number of municipal powers that may be delegated to the CAO, a planning commission or other employees. Do you really need to sit as your own Board of Revision? Like a good board of directors, setting good policies and delegating routine decision-making functions allows council to concentrate on the important, big-picture and strategic issues.

9. Municipalities (and council members) are subject to the law: Municipalities must comply with a whole host of laws, including workplace safety, environmental, water diversion, employment and other laws. Take the advice of the CAO. Get expert advice when needed. You are responsible for your own words, so do not make potentially defamatory remarks, whether inside or outside of council meetings. Do not put the municipality or yourself at risk of a large fine or a lawsuit.

10. The municipality's lawyer is not your lawyer: The municipality's lawyer takes

instructions from the CAO or council as a whole. Anything that you communicate to him or her must be shared with the CAO and all members of council. In a question of conflict of interest or if you are facing charges, you will be directed to seek your own counsel.

I hope that you find these tips to be informative and help to get the discussion going. I welcome your feedback. Good luck in carrying out your very important role as a member of municipal council. We all depend on you.

This article originally appeared in Municipal Leader magazine, and is reproduced with permission.

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at ndl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.