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| <br><b>COBOURG</b> | <b>THE CORPORATION OF THE TOWN OF COBOURG</b>  |         |
|   | <b>STAFF REPORT</b>  |         |
| TO:   | Mayor and Council Members  |         |
| FROM:   | Brent Larmer   |         |
| TITLE:  | By-Law Enforcement/Policy Coordinator and Deputy Clerk                               |         |
| DATE OF MEETING:  | August 21, 2017  |         |
| TITLE / SUBJECT:  | Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017, Comments and Review. |         |
| REPORT DATE:  | July 3, 2017   | File #: |

#### 1.0 STRATEGIC PLAN

Not Applicable.

#### 3.0 RECOMMENDATION

THAT Council receive the report for information purposes outlining the changes as presented in Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*; and

FURTHER THAT Council direct staff to review the report and noted changes with General Government Services and prepare reports for presentation to Council to enact the specific changes in Policy and applicable By-laws for adoption by Council as a result of these amendments of Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*.

#### 4.0 ORIGIN

In June 2015, the Provincial Government announced a review of the main pieces of legislation that govern municipalities in Ontario, such as the *Municipal Act, 2001*, *Municipal Elections Act, 1996 (MEA)*, the *Municipal Conflict of Interest Act* and other Acts such as and not limited to the following, *Building Code Act*, *Development Charges Act*, and *Planning Act*. The Province is required to review the *Municipal Act, 2001* and other legislation every five (5) years. In order to support the review, the Province released the "Municipal Legislation Review Public Consultation Discussion Guide" which discussed and considered three main themes: accountability and transparency, municipal financial sustainability; and responsive and flexible municipal government.



## 5.0 BACKGROUND

This report outlines and provides a brief description of the key features of Bill 68. The purpose of this report is to identify the amendments to the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and other related amendments to other Acts as set out in *Bill 68, the Modernizing Ontario's Municipal Legislation Act, 2017* and to provide comments on the proposed legislation for Council's consideration.

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017* was introduced in the Ontario Provincial Legislature for first reading on November 16, 2016. Through this process the Bill received ongoing consultation and submissions to the Standing Committee on Social Policy of the Provincial Legislature. Those submissions and consultations were submitted by Associations, Political and Staff (i.e. Association of Municipalities of Ontario (AMO) and the Association of Municipal Clerks and Treasurers of Ontario (AMCTO), and also all individual municipalities. On March 23, 2017 the Bill was read for second reading and was referred back to the standing committee for review and comment. On May 30, 2017, Bill 68 received third reading and Royal Assent.

## 6.0 ANALYSIS

### **MUNICIPAL ACT, 2001 BILL 68 ADMENDMENTS**

Bill 68 has introduced a number of changes to the *Municipal Act, 2001*, with the notable changes outlined below. The Town of Cobourg has been anticipating the changes that have received Royal Assent and a number of the new requirements the Town has already put into place and are in effect, these established requirements will be commented on within the sections below.

#### **Council Codes of Conduct- S.223.2**

The changes to the *Municipal Act, 2001* with the introduction of Bill 68 requires that all municipalities have a Code of Conduct in place for its Council and Advisory Committee and Local Boards. In addition, the Minister of Municipal Affairs would be given the authority to prescribe by regulation (223.2 (4)) what subject matter(s) must be included in the Code of Conduct. Currently municipalities have the authority to determine the contents of the Code of Conduct as defined by the Municipality.

Cobourg Municipal Council approved the Code of Conduct for Municipal Council on January 23, 2015. The Code of Conduct includes areas that Council determined important to include within the policy. The Code of Conduct policy includes provisions related to the Integrity Commissioner as well as a provision providing that Council review the Policy in January of each year.



One of the amendments in Bill 68 requires a Municipality to establish codes of conduct for all local boards. The Town would be required to amend the code of conduct to include those members of Advisory Committees and Local Boards.

Section 201(2.1) of the *Municipal Act, 2001* defines a Business Improvement Area BIA Board of Management as a local board of the municipality. With this change, Council is required to adopt a Code of Conduct for the Cobourg Downtown Business Improvement Area (DBIA) to follow and the DBIA Board Members would be subject to an investigation by the Integrity Commissioner.

#### **Integrity Commissioner- s.223.3 (1)**

With the introduction of Bill 68 municipalities will be required to have an Integrity Commissioner. If a municipality does not have a Integrity Commissioner, it would be required to make arrangements for the functions to be performed on a retainer basis or by an Integrity Commissioner of another municipality.

The Town of Cobourg Council in 2016 appointed a Integrity Commissioner and incorporated the position within the Town's Code of Conduct Policy. This demonstrates Cobourg Council prepared in advance of the passing of Bill 68.

In addition, Bill 68 expanded the role of the Integrity Commissioner to include an increased scope of powers, such as:

- The application of the code of conduct for Members of Council and the Code of Conduct for members of Local Boards; (previously in legislation)
- The application of any procedures, rules, policies of the municipality and local boards governing the ethical governing the ethical behavior of members of council and local boards; (previously in legislation);
- **The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interests Act to members of Council and of Local Boards; (New Addition)**
- **Requests from Members of Council and of Local Boards for advice respecting their obligations under the Code of Conduct applicable to the member; (New Addition)**
- **Requests from Members of Council and of Local Boards for advice respecting their obligations under a procedure, rule, or policy of the municipality or of the Local Board, as the case may be, governing the ethical behavior of members; (New Addition)**
- **Requests from Members of Council and of Local Boards for advice respecting their obligations under the *Municipal Conflicts of Interest Act*; (New Addition)**
- **The provision of educational information to Members of Council, Members of Local Boards, the municipality and the public about the municipality's codes of conduct for Members of Council and Members of Local Boards; (New Addition).**



### **Council/Municipal Staff Relations Policy- s.270(2.1)**

Bill 68 now requires that Municipal Council's pass a policy on Council-employee relations that address the responsibilities of the municipal staff and their interaction with Council. Sections 224 and 227 of the *Municipal Act, 2001* defines the roles and responsibilities of Council and the municipal administration respectively.

The Town of Cobourg has policies that address Council-employee relations as described in the Council Code of Conduct and the Employee Code of Conduct. The Town of Cobourg would need to expand and develop a policy specific to this new requirement and have Council approve the provisions.

### **Meeting Provisions**

#### **"meeting" definition-s.238 (1)**

A number of new additions regarding open meetings provisions were included in Bill 68 amendments of the *Municipal Act, 2001*. The new provisions would clarify the definition of a meeting 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 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.

#### **Electronic Participation- s.238(3.1)**

A new provision presented through Bill 68 provides Council and Committees with permissive authority to allow for electronic participation in meetings as defined by the municipalities Procedural By-law. It would be the decision of Municipal Council to decide whether electronic participation would be permitted for meetings. It is important to mention that electronic participation would not count towards quorum.

Cobourg Municipal Council has the discretion to add this provision to the Procedural By-law and incorporate parameters on how such a provision would work. The clarification that Council will have to determine would be if the member who is appearing at the Council meeting is not counted as quorum pursuant to the new provision, is the member permitted to vote on an agenda item.



### **Closed Meetings-s.239 (2)(h-k)**

Bill 68 also expands on the categories of matters that a Municipal Council may consider in a Closed Session to include:

(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 a 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.

### **County Council Appointment of an Alternate- s.268**

Bill 68 introduced the need for a lower-tier Council to temporarily appoint an alternate member of the lower-tier Council to attend County Council Meetings when the appointed/elected member is unable to attend a County Council Meeting. The present legislation only allows for a lower-tier municipality to appoint an alternate if the Member has been unable to attend for more than one month.

This new change in legislation would have to be considered and incorporated within the local Municipal Procedural By-law and in order to appoint a member of Council to be appointed as the alternate. The new provision would provide Council greater opportunity for adequate representation of the local municipality during consideration of County matters when the regular member is unable to attend meetings. The alternate would be required to maintain a reasonable level of knowledge and interest in upper-tier matters in the event the alternate member would be required to step in.

### **Policy for Pregnancy and Paternal Leaves for Members of Council- s.270**

Bill 68 contains a provision which will require all municipalities to adopt a policy regarding pregnancy leaves and paternal leaves of members of Council. Bill 68 also provides that a member's seat does not become vacant if the member is absent as a result of the member's pregnancy, the birth of the member's child or the adoption of a child by the member.



### **Policy on Tree Canopy and Natural Vegetation- s.270**

Bill 68 will require municipalities to adopt a policy which sets out the manner in which it will protect and enhance the tree canopy and natural vegetation in the municipality.

The Town of Cobourg currently has policies, by-laws and programs in place in order to support its local tree canopy including: Tree Preservation By-law, Official Plan policies to support urban forestry management and an Urban Forestry Master Plan to be completed at the end of 2017 in order to enhance the natural vegetation, improve biodiversity, and the protection of the Town's Urban forestry on both private and public property.

Making this policy a mandatory requirement emphasizes the importance of protecting and enhancing the Urban Forest and its benefits for the municipality including but not limited to carbon storage and habitat creation.

### **Broaden Authority to Use Administrative Monetary Penalties- s.434.1**

Bill 68 introduces and expands on the municipal authority to apply Administrative Monetary Penalties (AMP's) to all municipal by-laws. Currently, AMP's may be imposed for parking and licensing by-laws only. The broader authority provides for administrative regulations to be passed to set out the parameters for such an expanded system.

An AMP is imposed upon an individual not in compliance with a Municipal By-law. The process will allow municipalities to change from a court based fine system to a system conducted at the municipal administration level by issuing administrative fines. This means that an offence can be dealt with through an established municipal process and not through Provincial Court system. This approach reduces the need for court attendance/hearings and encourages compliance rather than punishment for contraventions.

The Town of Cobourg currently uses the Provincial Court System and the *Provincial Offences Act* when dealing with the issuing of parking and municipal by-law fines. Larger municipalities such as Toronto and St. Catherines use the AMP system. If in future Council wishes to proceed by way of the AMP system the Town of Cobourg has software already in place to proceed. However several other steps would be required if Council decided that this transition would to occur.

### **Environmental Standards for the Construction of Buildings- s.97.1**

The passing of Bill 68 now includes municipalities with the permissive authority to pass by-laws to mandate green standards respecting the construction of buildings, such as 'green roofs' or alternative roof surfaces, once an appropriate technical standard has been established in the *Building Code*.



There are certain circumstances under which municipalities can require such standards to be defined. The Bill now defines what a green roof is "a roof surface that supports the growth of vegetation over a substantial portion of the area for the purpose of water conservation or energy conservation. Cobourg Council already incorporated these types of sustainability initiatives as outlined within the Town of Cobourg Council Strategic Plan 2015-2018.

**New Broad Power to Deal with Climate Change- s.10(2), 11(2), s.147.**

Bill 68 expands municipal powers to regulate and include the ability to enact by-laws related to 'economic, social and environmental well-being of the Municipality including respecting climate change'. (s.10(2) 11(2)). *The Municipal Act, 2001* was strengthened to provide long term planning for energy use, including consideration of energy conservation, climate change and green energy. The provision of this broad power is positive and would give municipalities the flexibility required to enact regulations that would help assist with meeting obligations with respect to climate change. It would be of value for the Province of Ontario to provide further clarification through guidelines and supporting materials on the range of tools available to municipalities to support climate change activities as directed by Ontario's Climate Change Action Plan.

**MUNICIPAL CONFLICT OF INTEREST ACT BILL 68 CHANGES**

Bill 68 proposes changes to the *Municipal Act, 2001* as it relates to the role of the Integrity Commissioner including expanding their authority with respect to reviewing **conflict of interest complaints**. Bill 68 also proposes changes to the *Municipal Conflict of Interest Act*. Listed below are some of the changes to the current legislation.

**1) MCIA Principles- s.1.1**

Bill 68 adds a list of principles endorsed by the Province of Ontario with respect to the duties of members of Council Committees and Local Boards. These principles have already been taken in to account by approved Council approved Town of Cobourg policies with relation to the approved Accountability and Transparency Policy, and the Council Code of Conduct Policy.

The principles are as follows:

- the importance of integrity, independence and accountability in local government decision-making;
- the importance of certainty in reconciling the public duties and pecuniary interests of members;
- members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny;
- there is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.



## **2) Duty of Member, Contravention of the *Municipal Conflict of Interest Act*-s.5(2.1)**

Bill 68 incorporates a new provision where a member, found to have contravened the *Municipal Conflict of Interest Act*, may take during the discussion at Council regarding the proposed suspension of the remuneration paid to the member. The new section would allow the member to take part in the discussion of the matter, including making submissions to Council, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question with respect to the matter. If the matter is being discussed during a closed session, the member may attend that portion of the meeting.

## **3) Written Statement of Disclosure- s.5.1/Establishment of a Registry-s.6.1**

Bill 68 amends the MCIA to include the added responsibility for members of Council to submit a written disclosure of interest statement when declaring a conflict of interest at a meeting. This disclosure statement would set out the interest and its general nature and be filed with the Municipal Clerk. The statement would need to be filed as soon as possible after disclosing the interest at the meeting. Every municipality would be required to establish and maintain a registry with a copy of each statement filed for the meeting record. The registry would be available for public inspection in the manner and during the time as determined by the municipality.

Currently pursuant to the Town of Cobourg Procedural By-law there is already a requirement for Council Members to supply in writing to the Municipal Clerk the Conflict of Interest declaration at the meeting. The Municipal Clerk keeps these forms as a record from the meeting, the only addition the Town would need to update would be to provide the MCI Registry for public inspection.

## **4) Contravention Application (Integrity Commissioner)-s.8**

Bill 68 now clarifies the process that any person must follow to apply to a judge for a determination as to whether a member has contravened the *Municipal Conflict of Interest Act*. It also adds the ability for an Integrity Commissioner, upon completion of their investigation into an alleged conflict of interest, to apply to a judge for a determination as to whether a contravention has taken place.

These provisions provide clarity to the process of reviewing an alleged conflict of interest and provides a means for review by the Integrity Commissioner. Review of an alleged contravention will be reviewed by a judge and if a member is found in contravention to have a penalty imposed by the court. The costs of an application to a judge by the Integrity Commissioner are to be paid by the Council of a municipality.



### **5) Powers of a Judge Pursuant to the Municipal Conflict of Interest Act-s.9**

Finally, Bill 68 provides an amendment to the *Municipal Conflict of Interest Act* to expand the range of penalties available to a judge if a contravention of the Act has occurred. At present, the only penalties available are:

- to declare the seat vacant;
- disqualify the member or former member from being a member during a period thereafter of not more than seven years; and
- where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.

The Bill would provide for the following additional penalties:

- a reprimand; and
- a suspension of remuneration paid to the member for up to 90 days.

These additional penalties would provide judges with more latitude when dealing with conflict of interest violations.

### **MUNICIPAL ELECTIONS ACT- BILL 68 CHANGES**

Bill 68 provides for changes to the *Municipal Elections Act* as set out in the following sections as noted below.

#### **Term of Municipal Office-s.6(1)**

Bill 68 amends the Act to provide for the start date for a new term of Council from December 1 following a regular election, to November 15. This amendment was implemented as an effort to shorten the potential lame duck period between when the existing Council is still sitting and the new Council takes office. A transitional rule has been put into place under section 1.1 of the Act and applies with respect to the 2018 regular election, this meaning the 2018 Municipal Election Council Term will begin on December 1, 2018.

#### **Contributions to a Candidate s.88.9 and s.88.9.1**

Bill 68 increases the maximum campaign contribution limits to a single candidate or third party advertiser from \$750 to \$1,200. These are the same limits set out for Provincial elections. In addition, Bill 68 sets out a formula for determining the amount that a candidate and his or her spouse may contribute to the candidate's own campaign. In general, the formula for a candidate for the office of Head of Council, the amount would be the lessor of \$7,500 plus 20 cents per eligible elector or \$25,000. For a candidate running for any other office it would be the lessor of \$5,000 plus 20 cents per eligible elector or \$25,000. These provisions would provide clarity in the area of campaign expenses for a candidate.



7.0 FINANCIAL IMPLICATIONS/BUDGET IMPACT

There are no Financial Implications in relation to this report.

8.0 CONCLUSION

Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017* provides for a number of amendments to the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, the *Municipal Elections Act* as well as other pieces of legislation.

In general, a number of the amendments help to provide clarification which is positive for elected officials, municipal staff and the residents of the Town of Cobourg. The amendments will also help to broaden municipal authority, particularly in the area of climate change and the environment which is an important step in the changing sustainable and environmental initiatives.

It is recommended by Staff that Council receive the report for information purposes outlining the changes as presented in Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*; and further that Council direct staff to review the report and noted changes with General Government Services and prepare reports for presentation to Council to enact the specific changes in Policy and applicable By-laws for adoption by Council as a result of these amendments of Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*.

**Approved By:**

**Department:**