



As amended by GC on Oct. 26, 2015 and adopted by Council on October 27, 2015

City of Markham Recommendations for Reforming the Municipal Act

Item	Issue	Section	Description of Issue	Desired Outcome of Legislative Change to Issue
Accountability and Transparency				
1	Clear Definition of a "Meeting"	S. 238	<p><u>Municipal Act</u> must contain a better definition of a meeting. As a result of the closed meetings investigation under Section 239, the definition of "meeting" is being interpreted differently depending on what part of the Province you reside in. For example, the Ontario Ombudsman uses a definition such that any gathering of members of council or a committee would constitute a meeting.</p> <p>British Columbia's Ombudsman has taken a common sense approach by differentiating between a "meeting" a "gathering".</p>	It is recommended that the common law definition of meeting be included in the act to provide clarity and consistency. A meeting should be defined as when a quorum of elected officials gathers to deal with matters which would ordinarily form the basis of Council or a local board or committee's business and acts in such a way to move them materially along.
2	Review Open Meeting Exceptions (Part 1)	S. 239	While the <u>Municipal Act</u> contains a number of exceptions to the open meeting requirements (security of the property; personal matters about an identifiable individual; proposed or pending acquisition of land; labour relations or employee negotiations; litigation or potential litigation; solicitor-client advice; a matter in respect of which a council, local board, committee or other body may hold a	<p>The Act should define or provide more guidance on the meaning of each of the open meeting exceptions.</p> <p>The "Security of property" should be defined with lease included in the definition.</p>

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			<p>closed meeting under another Act), no definitions are provided.</p> <p>For instance, the scope of the “Security of the Property of the municipality” exemption is unclear given the decisions of the Information and Privacy Commissioner which have interpreted the provision restrictively to mean the security of physical assets and public safety.</p> <p>The lack of clear definitions for open meeting exceptions creates confusion for municipal councils, staff, the public, and Closed Meeting Investigators. It also results in inconsistent Closed Meeting Investigation outcomes across the Province.</p>	
3	Review Open Meeting Exceptions (Part 2)	S. 239	<p>While open meeting exceptions should be limited and specific, the current open meeting requirements do not afford municipal councils with enough flexibility to discuss strategic planning, commercial negotiations, or intergovernmental discussions. <u>In general, municipalities require the same flexibility as the Provincial Legislature to conduct meetings.</u></p>	<p>Council should be permitted, in <u>limited circumstances</u>, to meet in- camera to discuss:</p> <ol style="list-style-type: none"> 1. Strategic planning (no more than once a year for instance); 2. Commercial negotiations (<u>under established circumstances</u>); and 3. Intergovernmental discussions (under established circumstances).

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4	Clarify Council's Responsibility for Ensuring Local Boards & Municipal Services Corporations are Accountable	S. 239	The current accountability rules regarding open meeting requirements, etc. for Business Improvement Areas (BIA's) and Municipal Services Corporations are unclear and inconsistently applied across the Province.	The Province should review and clarify rules regarding the accountability of BIA's and Municipal Service Corporations.
5	Open Meeting Requirements do not align with the <u>Municipal Freedom of Information and Protection of Privacy Act</u> (MFIPPA)	S. 239	The current open meeting requirements are problematic and create anomalies, especially when negotiating business arrangements with the private sector. For instance, materials may be submitted confidentially but it is not clear that they can be discussed freely in-camera. Aligning MFIPPA with the <u>Municipal Act</u> would promote greater certainty in dealing with third party information. This alignment has been achieved in the Province of Alberta, for instance.	Alignment of MFIPPA with the <u>Municipal Act</u> . The exceptions to the requirement for open meetings should be expanded to include those matters which are exceptions to disclosure under MFIPPA, including: <ol style="list-style-type: none"> 1. Third party business interests; 2. Matters of personal privacy; 3. Third party economic interests; and 4. Relations with governments.
6	Education and Training Sessions	S. 239 (3.1)	The <u>Municipal Act</u> permits municipalities to hold closed "education and training" sessions as long as Members don't discuss or deal with any matter in a way that "materially advances the business or decision-making of the council, local board, or committee." However, little guidance is provided as to the meaning/scope of "education", "training", or "materially advance".	The Act should define or provide more guidance on the meaning of and parameters associated with, education and training sessions.

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7	Codes of Conduct	S. 223.2	<p>The decision to adopt a Code of Conduct remains a discretionary one for municipalities. However, municipalities that do not have Council Codes of Conduct in place are increasingly being perceived as less accountable to the public.</p> <p>There is no Provincial standard in terms of Code of Conduct content. This has resulted in different behavioural standards across Ontario as well as creating confusion with the public.</p> <p>The province of Saskatchewan recently introduced a series of amendments to its accountability legislation - one of these makes codes of conduct mandatory for all municipalities.</p>	The Province should make Council Codes of Conduct mandatory for all Ontario municipalities and should provide <u>a standard Code of Conduct for all municipalities to adopt to</u> ensure effectiveness and consistency across the Province.
8	Integrity Commissioner	S. 223.3	At present, the City of Toronto is the only Ontario municipality required to have an Integrity Commissioner. Each Ontario municipality should be required to appoint an Integrity Commissioner as part of the municipal accountability framework.	The Province should make the appointment of an Integrity Commissioner mandatory for all Ontario municipalities.

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9	Code of Conduct Investigations and Contravention Penalties	S. 223.4(5)	In the Act, a municipality can impose the following penalties on a Member of Council (or of a local board) if the Integrity Commissioner reports that the Member has violated the Code of Conduct: 1) a reprimand; or 2) suspension of the remuneration up to 90 days. Integrity investigations can be quite costly for a municipality. The Province should review the penalty options currently contained in the Act which are inadequate and have a questionable deterrent effect. For instance, consideration should be given to the possible inclusion of financial compensation to the municipality for all or a portion of the investigation costs should a Member be found in violation of the Code.	The Act should create additional rules for Integrity Commissioners to promote greater consistency in investigations, specifically by providing more guidance on how investigations are conducted, while giving Integrity Commissioners/ <u>Municipal Councils</u> extended powers to consider a broader range of penalties.
10	Accountability Mechanism for Accountability Officers	New	The Act does not contain an accountability framework for accountability officers (Integrity Commissioner; Ombudsman; Auditor General; Lobbyist Registrar; Closed Meeting Investigator).	The Province should establish an accountability framework with established guidelines such as officer mandate, investigation protocol and complaint resolution.
11	Municipal Complaints Framework	New	The Act should be amended to mandate municipalities to develop a fully articulated Complaints Policy to deal with customer service complaints (including those that are frivolous and vexatious). This Policy would form part of the municipal accountability framework.	The Act should be amended to mandate that municipalities create and implement a comprehensive Complaints Policy.

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12	Ward Boundary Reviews	New	The Act currently does not provide principles for municipalities to follow when undertaking a ward boundary review. These principles have emerged as a result of a significant number of ward boundary reviews across Ontario and should be included in the legislation to ensure a consistent, independent approach to this important process. <u>The Act does not provide a mandatory review period to ensure that wards accurately reflect current circumstances.</u>	The legislation should contain common principles for ward boundary reviews. <u>The Act should be revised to include a requirement for a ward boundary review every 10 years. These reviews would need to be staggered throughout Ontario to ensure that the Municipal Property Assessment Corporation can support such reviews.</u>
Municipal Financial Sustainability				
13	Tax Rolling of Outstanding Municipal Fines & Unpaid fines	S. 398(2), 446(3) & 446.4	Recovery of outstanding fines from By-law, Fire and Building Code violations.	Amend Section 441.1 to allow outstanding fines be added to the Municipal Tax Roll whether it's a joint or single ownership of a property to allow for greater flexibility to collect fines/penalties. Add a clause to Section 441.1 to provide that any unpaid fine/penalty would constitute a debt of the person to the municipality. Add an additional clause to Section 441.1 to provide that if the fine remains unpaid (after a certain time) the fine is deemed to be unpaid taxes.

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14	One Investment Program		Apply prudent investment standard to the One Investment Program. This would enable this pooled investment authority to provide its participants with greater diversification. It would also provide for the management of funds based on return potential and risk rather than the “legal list” approach of the statute. A legal list cannot keep pace with evolving investment markets.	Revise the One Investment Program to move away from the “legal list” approach to letting professional investment managers manage investment portfolios according to the market. This will allow municipalities to better utilize municipal investments as revenue - additional revenue will help municipal budgets and related capital financing plans.
15	Hotel / Accommodation Tax	New	The Act does not permit municipalities to levy hotel tax.	Amend the Act to allow municipalities the legislative authority to levy a hotel / accommodation tax.
16	Capping / Clawback		The Act does not permit municipalities to opt out of the capping and clawback program.	Amend Part IX of the Act to give municipalities the authority to opt out of the provisions of tax capping.
17	“Heads and Beds”	S. 323	“Heads and Beds” rate is set at \$75.00. This rate has not been adjusted in 29 years.	That the current “Heads and Beds” rate of \$75.00 be raised to \$140.00 beginning in 2016 and re-evaluated every 5 years based on increases in CPI.
18	Hydro Linear and Railway Rights of Way	S. 315	The Province last updated the rates for hydro Linear and Railway Rights of Way in 1988.	The use of Provincial statutory rates is inequitable <u>and must be addressed as soon as possible.</u> Recommend that the Province in consultation with the municipalities review and update the current statutory rates and these rates be re-evaluated every 5 years.

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19	Sale of debt	S. 305	Once a regulation is issued, a municipality may sell any prescribed debt payable to the municipality to any other person in accordance with the prescribed rules and conditions. To date no regulations have been issued.	The Province should issue regulations to permit the sale of debt as provided in section 305. The sale of debt provision should be included in sections 2(5) (8) bond-forward agreements and 5(3) commodity hedging of Regulation 653/05 Debt-related Financial Instruments and Financial Agreements. It should also be included in Regulation 438/97 Eligible Investments and Related Financial Agreements, sections 3(1) rating of securities, 3(6) sale of investments, 6(1) investment in currency other than Canadian dollars subsections 2(7.1) ,3(4.1), 4, 4.1 (1.1) rating of securities.
20	Investment in debt of any corporation incorporated under the <u>Electricity Act</u>	S. 418 (6)	O. Reg. 483/97 Eligible Investments and Related Financial Agreements s. 3.(8) restricts the investment a municipality may make in any corporation incorporated under the Electricity Act, 1998 such that the proposed investment does not exceed the total amount of investment in debt, including any interest accrued on such debt, of the municipality in such a corporation that existed on the day before the day the proposed investment is to be made.	The Act and associated regulations should be amended to exclude corporations that the municipality has significant ownership or control of.

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21	Investment in foreign currency	S. 418 (6)	O. Reg. 483/97 Eligible Investments and Related Financial Agreements s. 2. does not prescribe foreign currency as a security, in which a municipality may invest.	The Act and associated regulations should be amended to include the purchase of foreign currencies for the purpose of investment.
Responsive and Flexible Municipal Government				
Good Governance				
22	Filling Council Vacancies	S. 263	Filling of Council vacancies timeframe is too short. Currently, the Clerk shall hold a by-election, in accordance with the Municipal Elections Act, and fill the vacancy within 60 days of the Office being declared.	The legislation should be amended to permit 90 days to fill a Council vacancy.
Modernization				
23	Records Retention		The Act contains a number of records retention requirements which have become quite onerous, particularly with respect to electronic records. Compliance is difficult and the penalties for not doing so are now greater with the enactment of Bill 8.	The Province needs to clarify the requirements for retention of electronic records and consider giving municipalities more latitude to develop their own retention protocols, including with respect to the accessibility of electronic backups.
24	Approval of Records Retention Period by Municipal Auditor	S.255(1)(3)	The Act currently requires the municipal auditor to approve records retention periods. This is an outdated and irrelevant requirement.	Remove the requirement for the municipal auditor approval.

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25	Framework for Council Decision-Making in a Digital Era	New	There is currently no framework for decision-making by municipal Councils in a digital era. Such a framework should include provisions for electronic meetings and making decisions by written, electronic resolutions in some circumstances.	The Province should create a legislative framework for Council decision-making in the digital era, including provisions for electronic meetings and making decisions by written, electronic resolutions in some circumstances.
26	New Regulatory Approach for the Services Sharing Economy	New	The Act needs to be reviewed in light of the emergence of the services sharing economy. Municipalities have limited abilities to regulate activities that are no longer constrained to traditional borders or boundaries (e.g. UBER).	The Province should consider a new regulatory approach for the services sharing economy, recognizing the limited ability of municipalities to regulate activities that are no longer constrained to traditional borders or boundaries.
27	Review Regulatory Frameworks for tow trucks, taxis, adult entertainment		Framework is outdated and needs to be reviewed.	There should be Provincial standards for regulating these types of businesses. Consideration should be given to the creation of a Provincial licence (to allow people in these industries to obtain a licence anywhere). Municipalities could charge a fee (in addition to the Provincial fee) to offset local enforcement.
28	Clarity	New	Greater clarity (plain language & organization) would assist all municipal stakeholders with understanding their respective responsibilities & requirements of the Act.	The Act should be organized in a more consistent and logical manner. Review the definitions and descriptions to ensure that they meet their intended objective and ensure that plain language is used throughout the Act.
29	Review all registered mail requirements	New	Currently registered mail is the required method for delivery for a number of items.	Make provision for the electronic delivery of documents.

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Technical Amendments				
30	Cancellation, reduction, refund of taxes	S. 357 (1)	Clarification and the addition of subsection regarding the Municipal Property Assessment Corporation (MPAC) being the authority on valuation/classification is required.	A process requiring municipalities to provide all Section 357(1) applications to MPAC for an adjustment assessment should be added. Municipalities serve as an administrator of taxes, not the authority on changes in assessment.
31	Cancellation, reduction, refund of taxes	S. 357 (1)(d.1)	Clarification / expansion of criteria and definition of sickness or extreme poverty.	The Province needs to either clarify/add criteria to assist municipalities in assessing the qualification of individuals under the provision (i.e. sickness or extreme poverty) or to strike this subsection under Section 357(1) of the Act, as it is unclear and vague.
32	Conservation authority land			Amend the Act to include the power to exempt conservation authority land from municipal tax as is found in section 451 of the <u>City of Toronto Act, 2006</u> .