



October 26, 2015

City of Markham Recommendations for Reforming the Municipal Act

Item	Issue	Section	Description of Issue	Risk if Issue not Resolved	Desired Outcome of Legislative Change to Issue
Accountability and Transparency					
1	Clear Definition of a “Meeting”	S. 238	<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’re in. For example, the Ontario Ombudsman uses a definition such that any gathering of members of council or a committee would constitute a meeting.	The varying definitions are confusing for Council Members, the public and for those who provide advice for Council.	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. Better definition of meeting.
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 closed meeting under another Act), no definitions are provided. For instance, the scope of the “Security of the Property of the municipality” exemption is unclear given the decisions of the Information	Municipalities will continue to have varying interpretations of the exemptions for going in camera. Inconsistent Closed Meeting investigation outcomes across the Province will continue. Additionally, differing interpretations of what constitutes a properly “closed meeting” creates confusion for closed meeting investigators.	The Act should define or provide more guidance on the meaning of each of the open meeting exceptions. The “Security of property” should be defined with lease included in the definition.

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			and Privacy Commissioner which have interpreted the provision restrictively to mean the security of physical assets and public safety. 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.		
3	Review Open Meeting Exceptions (Part 2)	S. 239	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.	Municipalities will continue to have varying interpretations for going in camera.	Council should be permitted, in <u>limited</u> circumstances, to meet in- camera to discuss: 1. Strategic planning (no more than once a year for instance); and 2. Commercial negotiations/intergovernmental discussions (under established circumstances).
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 (BIAs) and Municipal Services Corporations are unclear and inconsistently applied across the Province.	Municipalities will continue to have varying rules regarding open meetings and BIAs and Municipal Service Corporations. This causes confusion and ambiguity with respect to responsibilities.	The Province should review and clarify rules regarding the accountability of BIA's and Municipal Service Corporations.

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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.	If MFIPPA and the <u>Municipal Act</u> are not aligned, the two Acts will remain disconnected and municipalities will continue to have varying interpretations for going in camera.	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: 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”.	Municipalities will continue to have varying interpretations as to when closed education and training sessions are appropriate.	The Act should define or provide more guidance on the meaning of and parameters associated with, education and training sessions.
7	Codes of Conduct	S. 223.2	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. 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.	There are no consistent inherent principles in existing Council Codes of Conduct because they are different in each municipality.	The Province should make Council Codes of Conduct mandatory for all Ontario municipalities and should provide more guidance on a values-based Code (instead of rules based) to ensure effectiveness and consistency across the Province.

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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.	Municipal Codes of Conduct cannot be properly enforced without an independently appointed Integrity Commissioner.	The Province should make the appointment of an Integrity Commissioner mandatory for all Ontario municipalities.
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 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.

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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.	Wide interpretation and a lack of consistent processes for complaint resolution.	The Act should be amended to mandate that municipalities create and implement a comprehensive Complaints Policy.
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.	Varying interpretations of the principles and conduct of ward boundary reviews will continue to exist.	The legislation should contain common principles for a ward boundary review.
Municipal Financial Sustainability					
13	Taxing Authority	New	Ontario municipalities currently do not have the same taxing authority as the City of Toronto. This additional taxing authority would assist in diversifying the municipal revenue base. Implementing any new tools will require significant analysis and consultation, however granting a broader power is a valuable first step.		The City of Markham should be afforded the same taxing powers as the City of Toronto. Consider introduction of a provision permitting the Region to impose direct taxes, subject to prescribed criteria, as provided in Section 267 of the <u>City of Toronto Act, 2006</u> .

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14	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.	Inability to collect fines results in fines not being an effective deterrent to by-law contraventions and other.	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.
15	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.
16	Hotel / Accommodation Tax		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.
17	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.

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18	“Heads and Beds”	S. 323	“Heads and Beds” rate is set at \$75.00. This rate has not been adjusted in 29 years.	Municipalities’ cost to provide services to area institutions has risen by at least the cost of inflation. The “Heads and Beds” rate has not been adjusted to reflect the Consumer Price Index (CPI).	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.
19	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 Province currently bases municipal payments for these types of property on statutory rates rather than on the Current Value Assessment.	The use of Provincial statutory rates is inequitable. Recommend that the Province in consultation with the municipalities review and update the current statutory rates and re-evaluated every 5 years.
20	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.

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21	Investment in debt of any corporation incorporated under the <i>Electricity Act</i>	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.
22	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.
23	Administrative Penalties	S. 102.1 & 151 (1) (g)	Currently, Ontario Regulation 333/07 permits municipalities to implement a system of Administrative Penalties for the enforcement, adjudication and processing of all parking offences <i>except</i> accessible parking violations. The Act should be aligned with Section 27 (2) of the <u>Provincial Offences Act</u> which states that “A person who contravenes clause (1) (a), (b), (c), (d), (e) or (f) is guilty of an offence and on conviction is liable to a fine of not less than \$300 and not more than \$5,000.” to permit the enforcement of accessible parking offences under an Administrative Penalty System. The minimum \$100 penalty should be	If accessible parking offences continue to be excluded from the Administrative Penalties System, the courts will continue to be overloaded with adjudication of all parking matters.	The Deputy Minister of the Ministry of the Attorney General has publically stated the Province plans to introduce legislation to make Administrative Penalties programs mandatory in 2016. Accordingly, the Province should expand the scope of Administrative Penalties for <i>all</i> parking offences; this would include accessible parking violations and increasing the maximum penalty amount to at least \$300. The Province should permit the use of Administrative Penalties for <i>all</i> regulatory by-laws and the maximum penalty amount should be increased to \$1000 for consistency with the

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			increased to at least \$300 to allow for this alignment and not necessitate municipalities that implement a system of Administrative Penalties to run two concurrent parking enforcement systems. Section 151 (1) (g) of the Municipal Act provides a municipality with the authority to require a person to pay an administrative penalty if the person has contravened the municipality’s licensing by-law. Administrative Penalties should be expanded to permit the use of Administrative Penalties as an enforcement tool for <i>all</i> regulatory by-laws.		Provincial Offences Act.
Responsive and Flexible Municipal Government					
Good Governance					
24	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 risks involved with the current timeframe include: 1. Insufficient time to prepare for a by-election; 2. The Candidates don’t have enough time to campaign; and 3. The public does not have enough time to make an informed decision.	The legislation should be amended to permit 90 days to fill a Council vacancy.

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Modernization					
25	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.
26	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.	Few municipalities adhere to this requirement and few municipal auditors understand their role with respect to this requirement.	Remove the requirement for the municipal auditor approval
27	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.	Rules will continue to be applied differently across the Province. For instance, the <u>City of Toronto Act</u> permits Members of Council to participate electronically (however, any such Member does not count towards a quorum). All Ontario municipalities should be provided with the authority to determine when remote participation at Council, Local Board, and Advisory Committee meetings (including the Accessibility Advisory Committee) is appropriate.	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.

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28	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.
29	Review Regulatory Frameworks for tow trucks, taxis, adult entertainment		Framework is outdated and needs to be reviewed.	Each municipality has differing rules.	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
30	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.
31	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.
Technical Amendments					
32	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.	The Council of the Municipality is legislatively articulated as being the authority on rendering decisions in changes in assessment value and/or	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

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				classification as a result of a change event.	taxes, not the authority on changes in assessment.
33	Cancellation, reduction, refund of taxes	S. 357 (1)(d.1)	Clarification / expansion of criteria and definition of sickness or extreme poverty.	Municipalities will continue to lack understanding (criteria) and expertise in assessing the qualification of individuals under the provision (i.e. 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.
34	Conservation authority land			Broadening the power to exempt these lands from municipal taxation would ensure that conservation authorities are treated similarly irrespective of their location within Ontario	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>