

Toward a New Procedural By-law

Presentation to Council and Staff of the Municipality of West Grey



Serving Local Government

***Fred Dean
January 2021***

Why a New Procedure By-law?

- Procedure By-laws are mandatory
- By-law needs to reflect current practices and Best Practices
- Provincial amendments require updates
 - Conflict of Interest requirements
 - Virtual attendance



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Purposes of a Procedure By-law

- Sets out rules for meetings
- If well done, allows for effective decisions
- Relationships
- How Council receives information
- Conduct of members, staff & the public
- Governance structure, ie committees
- Defines rules for Council committees



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The Agenda for Today

- **Comments on Clerk's Presentation**
- **Please ask questions**
- **Review of some basic meeting rules**
- **Review of Roles of Council and Staff**
- **Next steps**



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Other Sources of Meeting Rules

- **Municipal Act**
- **British Parliamentary Tradition**
- **External sources such as Roberts**
- **MCIA**
- **Planning Act**



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Municipal Powers

- Powers come from the Province
 - Acts and Regulations
- No inherent jurisdiction
- Size does not matter
 - Types of Municipalities
 - West Grey is lower tier in a two-tier structure



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Basic Principles

- **Municipal Powers**
 - **Complex, technical, multi-faceted**
 - **Section 5 Municipal Act**
 - **Shall be exercised by Council**
 - **Exercised by By-law**



How Powers are Exercised

Powers are exercised at a duly constituted meeting

- ✓ Notice to the public
- ✓ Open to the public
- ✓ Quorum
- ✓ Majority vote
- ✓ All members vote



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How Council Speaks

By-law

- Exercise power
- Open meeting only
- Readings
- Requires Mover & Seconder

Resolution

- Starts as a Motion
- Open or closed
- Requires Mover & Seconder



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Motions

- **Mover & Secnder**
- **Routine ones prepared in advance**
- **Others written or verbal?**
- **Municipal Conflict of Interest Act**
- **Debate occurs only when motion is before council**



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Roles & Responsibilities

- **Legislated – Municipal Act**
- **Powers & Responsibilities come from the Province**



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Council

- Responsibilities set forth in MA
- Makes decisions and sets policy
- Exercises corporate powers
- Acts collectively, publicly & with advanced notice
- No management functions
- Limited individual powers

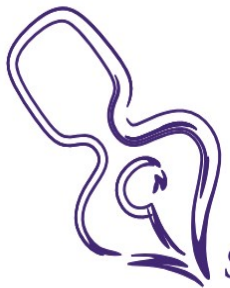
Mayor's Role at Meetings

- **Preside over council meetings so that its business can be carried out efficiently and effectively**
- **Provide leadership to the council**
- **Keep Council focused on agenda**
- **Maintain decorum**
- **Power to expel any person from meeting**



Head of Council

- ✓ Leadership to council
- ✓ Advisor to council on key matters
- ✓ Effective chair
- ✓ Influence
- ✓ No management powers
- ✓ Municipal “Champion” as CEO
- ✓ Role of Deputy



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Councillor

- **Public Official**
- **Limited individual powers**
- **No management powers**
- **Member of Council that**
 - **Sets Policy**
 - **Makes decisions**

Chief Administrative Officer

- Council may appoint a CAO who reports to Council and shall be responsible for
 - exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality
 - performing such other duties as are assigned by the municipality
- Critical position

Municipal Staff

It is the responsibility of Administration to:

- **undertake research & provide advice to council**
- **implement council's decisions**
- **establish administrative practices & procedures to carry out council's decisions**



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Statutory Officers

- **Appointed by council by-law**
- **Have duties under a provincial statute or regulation**
- **Council or other staff cannot interfere with the exercise of those powers**
- **Examples –**
 - **Clerk / CBO / Treasurer / Fire Chief**



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Roles Summary

Issue identification (All)



Analysis and Recommendations (Staff)



Decision (Council)



Implementation and Measurement (Staff)



Evaluation (Council)

Council should steer the boat rather than row it

- Council should decide what services and programs the municipality will offer and leave to staff the “how to”
- Osborne and Gaebler (*Reinventing Government*)



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Council Policies

Section 270 MA

Council Policies that shall be adopted & maintained

- Notice
- A & T
- Delegation
- Sale & Disposition of Land
- Hiring of Employees
- Procurement
- Pregnancy & Parental Leave
- Relationship between Members & Employees



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Council Members/Employee and Officer Relations Policy

- Council is the Employer
- Statutory duties of officers
- CAO has general management duties
- Respect for chain of command
- Comments and questions at Council
- OHSA Policies on Workplace Violence and Harassment and training
- Personal relationship disclosure
- Information/action requests and sharing of responses
- And more.....



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Meeting Defined

“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.**



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What is a meeting?

- Quorum?
- Advancing business or decision making?
- Social Gathering?
- Conference call?
- Single calls?
- Emails involving a group?
- On-line group discussion?

It is a New World !

Electronic Participation at Meetings

- Procedure by-law may provide for a member to participate electronically
- May be an open or closed meeting
- Members are counted in quorum
- All of the same meeting rules apply



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Electronic Attendance at Closed Meetings

- **Duty of confidentiality**
- **Only those authorized may attend**
- **Mayor shall terminate link to member who is not visibly present**
- **Mayor shall terminate link to member or staff who has an unauthorized person with them**
- **Confidentiality is a cornerstone of the Code of Conduct**



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Procedure By-law

- Along with the annual budget it is the most important document in your municipality!
- Governance model
- Rules of procedure for all meetings
- Look to the Clerk for advice



Procedure By-law

- **Defines relationships**
 - **with public**
 - eg rules for delegations
 - **With staff**
 - **With each other**
- **Review it every term**



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Agendas

- Prior to the meeting, Staff will
 - Set the time for meeting
 - Prepare the reports
 - Draft Motions
 - Draft by-laws
- Agenda format set out in Procedure By-law
- Create the agenda
- Review agenda with the Chair
- Adding items to an Agenda
- The importance of Notice to the Public



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Staff Reports

- **Primary source for Council**
- **Written or verbal?**
- **Recommendation**
- **Format**
- **Administrative approvals**



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Chairing a Meeting

- Preparation is key
- Review agenda with staff
- Keep meeting focused
- Maintain order & decorum
- Knowledge of Procedure By-law
- Rule on Procedural matters
- Deputy chair acts when Chair is away or otherwise not available



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Minutes

- Required for all meetings of council, local boards and committees, open or closed
- Duty of Clerk, recording secretary
 - “without note or comment”
- Minutes are a record of corporate acts, not a story.



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Predictable and Transparent Meetings

- Predictable meetings?
- Transparent meetings?
- No additions to published agenda
- How can you be surprised?
- A matter of trust



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The Ambush!

- **Avoid additions to agenda**
- **A question of fairness & trust**
- **Notice of Motion**
- **Avoid “Other” or “New Business”**
- **Questions from the public**
- **“Town Hall” Meetings**



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Notice

- **Procedure By-law**
 - **Sets out requirements for Regular & Special Meetings**
- **Notice Policy**
 - **For specific subject matters**
 - **Every staff writing reports must determine if special notice is required**



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Voting

Sections 243-246

- **Everybody votes**
- **Secret votes are of no effect**
- **Tie votes**
- **Recorded vote**
- **Failure to vote is a negative vote**



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Main Motions

- Substantive rather than procedural
- Moved and seconded
- Decisions of the meeting are motions passed or defeated
- Affirmative phrasing
- Only one Motion before meeting at a time
- Motion should only be withdrawn by mover & seconder with assent of majority

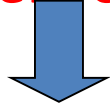
Amending a Main Motion

- Amendment must be moved & seconded
- Deal with one amendment at a time
- Must be relevant
- Cannot negate main motion



MAIN MOTION

Deliberate



Deliberate & Vote



AMENDMENT TO MAIN MOTION

Deliberate



Deliberate & Vote



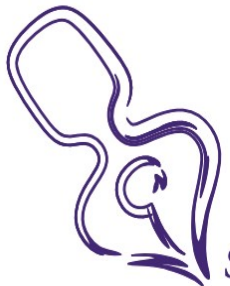
AMENDMENT TO AMENDMENT

Deliberate & Vote



Reconsideration

- **What is it?**
- **Applicable Rules**
 - **Prevailing side**
 - **At meeting**
 - **Subsequent meeting**
 - **Once in 12 month period**
- **Let's go through the steps**
- **Coming back to Council through a committee or the public**



Appeal the Decision of the Chair

- **Whose Meeting is it?**
- **Any decision of Chair may be appealed**
- **Vote by Council**



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And.....

- Quorum
 - What is it?
 - What happens when you lose it?
 - MCIA
- Confirmatory By-laws

MCIA

- **Written & Verbal Declaration of Pecuniary Interest AND General Nature**
- **Registry**
- **Role of Clerk?**
- **Quorum impact**



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Minutes of Council, Committees & Local Boards

- **Adopt or Receive?**
- **What is the effect of adopting Minutes?**
- **When are they acted upon?**



Delegations

- Purpose of delegations to Council
- Rules are in the Procedure By-law
- Time allocated for each delegation
- # per meeting: 3
- Questions for clarification
- Members do not debate with delegation
- Hear delegations once on a topic

Presentations

- By-law distinguishes presentations from delegations
- Flexible time limits set in advance
- Presenter attends at request of municipality

Effective Meetings

- **Length of meeting**
 - **Start on time**
 - **Time limits on speakers**
 - **Items on the agenda**
 - **How often members speak**
 - **Dick Dow**
 - **Consent Agenda**
- **Adherence to rules**

Consent Agenda

- Used by all large municipalities
- And many small ones
- Sudbury
- Ear Falls
- Benefits
- Risks



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Municipal Governance

- **How does Council make decisions?**
- **Staff**
- **Committees**
 - **Types**
 - **Purposes**
- **Local Boards**
- **Meetings and more meetings...**
- **Procedure By-law**

Committee Structure

- **Purpose of Council Committees**
- **Council Committees -**
 - **Are mandated by council**
 - **Populated by council**
 - **Report to council**
- **Committees make recommendations**
- **How many steps before council
| decision?**



Meetings – Open or Closed?

- **Key element of Accountable and Transparent Government**
- **Members and staff must know legislated rules for holding closed meetings**
- **Closed meetings**
 - **Limited ability to hold closed meetings**
 - **Subject to review by an Investigator**

Basic *Principles...*

- All meetings of council, local boards and committees shall be open to the public!
- Meetings may only be closed in circumstances set forth in section 239, Municipal Act
- Rules apply to council, committees and some local boards



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Closed Meetings

- 1...2...3
- Possible subjects
- Required procedures
- Governing legislation
- Errors to avoid
- FAQs –coffee shop, road tour, electronic...



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Subject Matters at Closed Meetings

Section 239

- **Security of property**
- **Personal matter about an identifiable individual**
- **Acquisition or disposition of real property**
- **Labour relations or employee negotiations**



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Subject Matters at Closed Meetings

Section 239

- **Litigation or potential litigation**
- **Advice that is subject to solicitor-client privilege**
- **Under another Act**
 - *Emergency Management Act*
 - *MFIPPA*



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Subject Matters at Closed Meetings

Subsection 239 (3.1)...

- Meeting may be closed if –
 - for the purpose of educating or training the members AND
 - no member discusses or deals with a matter in a way that materially advances the business or decision-making



Subject Matters at Closed Meetings

Section 239

- 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;
- 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

Subject Matters at Closed Meetings

Section 239

- a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- 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.



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Public Resolution Required

- Required before closed meeting can occur
- Must be passed at an open meeting
- The Resolution must
 - Acknowledge fact of closed meeting
 - Indicate the general nature of the matter to be considered
- No additional items!!



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Votes at Closed Meetings

- **Votes are only permitted for the following -**
 - **Procedural Matters**
 - **Direction**
 - **Adjournment**
- **Why are written Resolutions important?**



Reporting Out

- **Reporting out in public session**
 - **Considerations**
 - **Process**
 - **Best Practice**

Closed Meeting Investigations

- Any person may request an investigation whether municipality, local board or committee has complied with s. 239 or the procedure by-law in respect of a closed meeting
- Independent investigation
- Amberley Gavel Ltd.



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Personal Responsibilities

- ✓ Council Members Code of Conduct
- ✓ Integrity Commissioner
- ✓ Municipal Conflict of Interest Act
- ✓ Water – WCWC training
- ✓ Occupational Health and Safety
- ✓ Criminal Code
- ✓ MFIPPA



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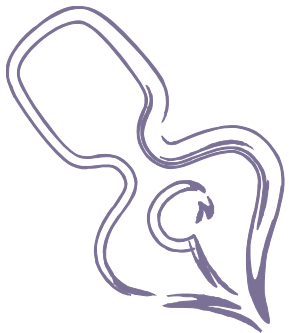
The Municipal Conflict of Interest Act

- ✓ Major changes in last two years
- ✓ Each member's personal obligation
- ✓ Governs conduct of members
- ✓ Does not apply to staff

Member's Duties

If a member has a pecuniary interest:

- **Declare the pecuniary interest**
- **State the general nature of the interest**
- **Do not:**
 - **Influence before, during or after the meeting**
 - **Participate**
 - **Vote**



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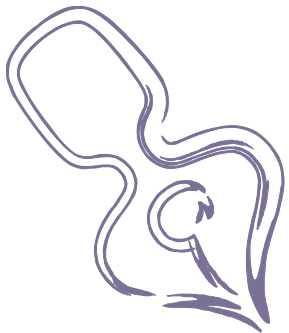
Declarations of Pecuniary Interest

➤ Verbal Declaration

- Verbally disclose a PI and the general nature at the meeting**
- Make sure it is properly recorded in minutes**

➤ Written Declaration

- Member must file a written declaration with Clerk**
- Registry with verbal & written declarations maintained by Clerk**



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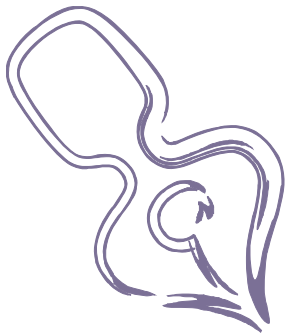
Declarations of Pecuniary Interest

➤ **Registry**

- **Registry with written and verbal declarations must be maintained by Clerk**
- **Post on website**

➤ **Best Practice**

- **Write it out**
- **Read it at meeting**
- **Give it to Clerk**
- **Check the minutes and registry**



Municipal Conflict Of Interest Act

- **Closed meetings**
- **Quorum**
 - **Can be reduced to 2 members**
- **Absence from meeting**
 - **Declare at next meeting**



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“Where do I find general advice?”

- **Educate yourself**
 - **Read the Act regularly**
 - **Book and articles**
 - **Google Alerts**
- **Staff may only assist with general advice**
- **Integrity Commissioner**

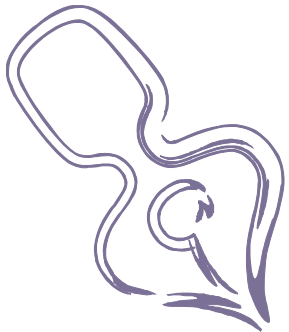


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Written Opinion of IC

- **Members may request in writing an opinion from IC**
- **IC will respond in writing**
- **Request must offer full disclosure**
- **Member can rely on IC opinion**



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Integrity Commissioner

- ✓ **Mandatory since March 2019**
- ✓ **Municipal Officer**
- ✓ **Expanded Role... investigations, reporting to council, education of council & public, written opinions to members**
- ✓ **Code of Conduct**
- ✓ **MCIA**

Impacts of Recent Changes

- ✓ Little impact in many municipalities
- ✓ Greater scrutiny by public
- ✓ Greater ease of complaints
- ✓ Costs for all code violations will be borne by municipality
- ✓ Court costs will be borne by public where IC begins court process

Summing up

- **Municipal government is complex and regulated**
- **Municipal Powers rest with Council**
- **Understand the role you are elected to fulfill**
- **Do your homework!**
- **Have fun and don't forget your role is to “set the course”!**



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Next Steps

- See Clerk's report
- By-law needs a good index
- Make sure it is easy to locate on your website
- Train committee and local board members



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In Summary

- **The Procedure By-law is a critical document**
- **Effective Members of Council understand its importance and how to make it work for them**
- **Whose meeting is it?**
- **Congratulations to Council and staff for undertaking this important review**
- **Thank you for the opportunity to participate**

The content of this presentation is intended to provide a general guide to the subject matter and is not legal advice. Specialist advice should be sought about your specific circumstances.