

Bulletin #2022-37

MUNICIPAL RELATIONS

Important Notice to All Council Members

Human Resource Practices and Employment

All council members are reminded to carefully consider their authority regarding human resource decisions, especially related to the suspension or termination of employees.

The Municipal Act establishes, by default, a “one employee” model for councils, where the council’s sole direct employee is the Chief Administrative Officer (CAO). All other staff members report through your municipality’s organizational structure to the CAO, who is empowered by the Act to manage and oversee staff. This is a best practice used across the public and private sectors to ensure that organizations and their employees have clear internal structures, effective lines of accountability and responsibility, and can efficiently achieve their objectives and implement their council’s or board’s vision.

Under section 125 of The Municipal Act, the suspension or termination of a CAO’s employment can only occur if council has voted on the termination (i.e. by resolution during a council meeting), and requires a majority of the number of members that make up the council to vote in favour, regardless of any vacancies or abstentions on council. Individual council members cannot terminate a CAO’s employment. This authority cannot be delegated by the council.

Council also cannot normally terminate any other staff positions, as management of municipal staff is the responsibility of the CAO unless the council has provided otherwise under section 127(1)(d) of the Act. If council is exercising this authority, that must be clearly set out in a resolution or by-law passed by the council, as councils may only act by resolution or by-law. Any such delegation of this authority by council may only be done by by-law to the head of council, a council committee, the CAO, or a designated officer of the municipality.

Discussions amongst council members regarding the termination of an employee can, and should, occur after council has closed a portion of its meeting to the public to protect the personal privacy of employees. However, any decision to terminate an employee may only occur by resolution or by-law, which can only be passed after the council meeting has been re-opened to the public.

Councils should ensure that proper procedures are always followed, as doing otherwise creates unnecessary legal risks for municipalities and their taxpayers. Municipalities should also ensure they have appropriate advice from legal counsel or human resource professionals as necessary, when terminating or suspending employment, and making decisions regarding severance and other related matters.

As noted above Council members can only act individually on very specific circumstances identified in legislation, where the head of council may act on the municipality’s behalf. Doing otherwise exposes the council member to the risk of committing an offence under The Municipal Act, and any voter may also take them to court and hold the municipality or an individual council member personally liable for any costs associated with their action.

Council members are also reminded that they may not serve as municipal employees, even in an acting or temporary status, without first resigning from their position on council.

Should you require additional information on the above, please consult your municipality’s CAO. In the event that you need other information, Municipal Relations can be contacted.