

MANITOBA
MUNICIPAL
RELATIONS



MANITOBA MUNICIPAL RELATIONS

The Procedures Manual

MUNICIPAL ACT PROCEDURES MANUAL

Last updated: April 2022

Disclaimer: The Municipal Act Procedures Manual is a companion guide to The Municipal Act. The information contained is for guidance only.

The manual is intended as an administrative resource for internal use by municipal officials only. It is not intended for distribution.

Prepared by: Municipal Relations

MUNICIPAL ACT PROCEDURES MANUAL

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PART: INTRODUCTION	
Subject: 1 – Purpose and Organization of the Manual	
Page: Intro.1.1	Date Issued: April 2022
New:	Amendment: √

Intro.1 Purpose and Organization of the Manual

(1) Purpose of the Manual

Effective municipal administration requires a keen knowledge of *The Municipal Act* and other legislation affecting the operations of municipalities. It is imperative that municipal officials (chief administrative officers and councils) ensure that required procedures are understood and handled properly, not only to meet legislative requirements, but to protect the interests of the municipality and its citizens.

As a companion guide to *The Municipal Act*, this procedures manual gives municipal officials an easily accessible resource to guide their municipality through a number of *Municipal Act* requirements and procedures. We are confident that municipal officials will find the information and procedures in this manual helpful and timesaving.

The procedural manual is continually evolving in response to the changing municipal environment, and so, from time to time, new sections will be created and distributed.

Look to the Manual First! This manual will answer many questions related to *The Municipal Act* requirements and procedures, providing municipal officials with the detail needed to carry out very specific procedures. If the manual does not provide the information you require, please contact a Municipal Services Officer:

<p>Winnipeg Office:</p> <p>Phone: (204) 945-2572</p> <p>508 - 800 Portage Avenue, Winnipeg, Manitoba, R3G 0N4 - Fax: (204) 948-2780</p> <p>Brandon Office:</p> <p>Phone: (204) 726-6571</p> <p>Box 22080, 2022 Currie Blvd., Brandon, Manitoba, R7A 6Y9 - Fax: (204) 726-7499</p> <p>E-mail:</p> <p>mrmaas@gov.mb.ca</p>

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PART: INTRODUCTION	
Subject: 1 – Purpose and Organization of the Manual	
Page: Intro.1.2	Date Issued: January 2017
New:	Amendment: √

(2) Organization of the Manual

Subjects discussed in the manual are identified in the Table of Contents and are organized into major “Parts” which correspond to the “Parts” of *The Municipal Act*. For example, issues relating to council practice and procedures (Part 5 of the legislation), are found in Part 5, Practice and Procedures. Some manual “Parts” do not correspond to the Act including this Introduction Part. These parts contain general information that may be helpful and important to municipalities.

Subjects within each Part are also numbered. For example, 3.2 refers to Part 3, Subject 2, which is “Wards for Election Purposes.” Note that each manual section is numbered to reflect part number, subject number and specific page number. The specific location of “Wards for Election Purposes” is pages 3.2.1 through 3.2.6.

Following the Table of Contents is an alphabetical index of subjects that cross-references the applicable Part numbers. The Subject Index can assist in identifying the manual location of topics.

Administrators will note that at this time, there is not a manual section for every Part of the Act. If there is an expressed need for more information on a specific Part, Municipal Relations will develop that information for later inclusion in the manual.

Municipal Relations wants to ensure that this manual is a helpful resource to administrative staff and elected officials of municipalities. To assist in achieving this goal, any comments about the manual are welcome.

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PART: INTRODUCTION	
Subject: 2 – Upkeep and Amendments	
Page: Intro.2.1	Date Issued: January 2017
New:	Amendment: √

Intro.2 Upkeep and Amendments

The Procedures Manual is available online through Manitoba Municipalities Online (MMO). The online format will always be the most current and accurate version available.

When changes are required, or when a new section is to be added to the Manual, Municipal Relations will update the Procedures Manual online. Municipalities will be notified of any changes, accompanied by a numbered Filing Instruction sheet, indicating which pages or which sections of the manual must be removed, replaced, or added. Municipalities will be able to download and print revised pages or sections for insertion in their copy.

The Record of Manual Amendments page (see next page) will also be updated by the Department. This log provides a summary of when amendments were issued and is a control to ensure that all amendments have been recorded.

Municipal Act Procedures Manual

PART: INTRODUCTION	
Subject: 3 – Record of Manual Amendments	
Page: Intro.3.1	Date Issued: April 2022
New: <input checked="" type="checkbox"/>	Amendment:

Intro.3 Record of Manual Amendments

Filing Instruction Number	Amendment Issue Date
#1	February, 1998
#2	May, 1998
#3	February, 1999
#4	March, 2000
#5	February, 2003
#6	November, 2003
#7	April, 2005
#8	October, 2007
#9	June, 2008
#10	June, 2009
#11	Dec, 2009
#12	October, 2011
#13	October, 2012
#14	June, 2014
#15	January, 2017
#16	March, 2018
#17	April, 2022

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PART: INTRODUCTION	
Subject: 3 – Record of Manual Amendments	
Page: Intro.3.2	Date Issued: April 2022
New: <input checked="" type="checkbox"/>	Amendment:

Record of Manual Amendments

Filing Instruction Number	Amendment Issue Date	Entered By	Date Entered

Municipal Act Procedures Manual

Filing Instruction #17 Issue Date: April 2022

Update your Record of Manual Amendments log (located at Intro.3.1) by recording the Filing Instruction number, the issue date of the amendment, the initials of the person updating the log, and the date your Procedures Manual is updated.

For future reference, retain this Filing Instruction immediately behind the Record of Manual Amendments log.

UPDATED Manual Sections	Remove pages	Insert pages
Intro.1 – Purpose and Organization	Intro.1.1	Intro.1.1
Intro.3 – Record of Manual Amendments	Intro.3.1	Intro.3.1
3.1 – General Municipal Elections	3.1.1	3.1.1
3.5 – Compensation Reimbursement of Expenses	3.5.1 - 3.5.11	3.5.1 – 3.5.5
6.2 – Municipal Audits	6.2.1 – 6.2.8	6.2.1 – 6.2.9
6.3 – Approval of Deficits Transfers	6.3.1 – 6.3.3	6.3.1 – 6.3.6
OM.2 – Board of Revision	OM.2.1	OM.2.1

Description of Amendments:

- 3.5** *Compensation Reimbursement of Expenses* – updated to reflect changes to the Canada Income Tax Act and the Public Sector Compensation Disclosure Act.
- 6.2** *Municipal Audits* – updated to reflect submission of auditor appointments on Manitoba Municipalities Online, reflect changes to meet the Public Sector Accounting Standards financial reporting requirements, and update suggested criteria for evaluation of audit proposals.
- 6.3** *Approval of Deficits Transfers* – updated to provide additional clarity regarding the requirements and processes for requesting approval of deficits and transfers, and to provide sample scenarios applying the formula under Regulation 49/97.

Other Updates	Intro.1	Updated email address
	Intro.3	Updated record of amendments
	3.1	Updated election dates
	OM.2	Updated phone and fax numbers

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PART: GENERAL

Subject: 1 – Important Dates and Events

Page: Gen.1.1

Date Issued: January 2017

New:

Amendment: √

General.1 Important Dates and Events

The Municipal Act requires that certain duties must be completed on a specific date. Other municipal responsibilities or activities undertaken by municipalities may be completed on a timeframe established by the municipality.

The following may be a useful reminder for chief administrative officers and municipal staff of required, and in some circumstances, recommended dates and events. **Certain dates and events appear in bold print, to assist in identifying actions that have deadlines set by *The Municipal Act*.** Municipalities may wish to use these dates and events to establish their own calendar of dates and events. Please note the list provided **is not an inclusive list**.

(1) Dates and Events by Calendar Month

January

by 1st

Adopt interim operating financial plan by resolution.

Municipal Act, s. 163.

Maintain and keep posted in the municipal office a list identifying each property in arrears of taxes for more than one year. *Municipal Act, s. 364*

by 15th

Submit annual return to Municipal Employees Benefit Plan.

by 31st

Remit balance of previous year's education levies to School Divisions and Public Schools Finance Board. *Public Schools Act, Regulation 371/88*

February

by 28th

Forward T4 Income Tax Return to District Taxation office and T4 slips to each employee and member of council as required.

by 28th

Forward Workers Compensation Board annual return and estimates for municipal fiscal year.

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PART: GENERAL

Subject: 1 – Important Dates and Events

Page: Gen.1.2

Date Issued: January 2017

New:

Amendment: √

March by 1st

Complete the annual operating report and submit the audited financial statement, the current vehicle inspection report and vehicle registration, for the Mobility Disadvantaged Transportation Program to Municipal Finance and Advisory Services.

by 15th

Submit financial information return to Municipal Finance and Advisory Services through Manitoba Municipalities Online (MMO). *Municipal Act, ss. 183(2)*

by 15th

Complete the online federal gas tax report and provide a copy to your municipality's auditor. Municipal auditor's reports must be submitted by June 30th. *Municipal Act, ss. 190(1)*

by 31st

Submit the Building Manitoba Fund-General Assistance report to Municipal Finance and Advisory Services through MMO.

by 31st

Submit all returns and statements required for joint provincial/municipal projects or programs. Provincial fiscal year end.

April

Submit list of property tax arrears to be included on printed tax statements to the department through MMO.

May

by 15th

File a signed copy of the municipality's financial plan for the current year with Municipal Finance and Advisory Services. *Municipal Act, ss. 162(4)*

by 15th

Set tax rates, impose taxes, and set due date for payment of taxes, by by-law. *Municipal Act, ss. 304(1)*

by 15th

Set business tax rate, impose a business tax, and set a due date for payment of the tax, by by-law, if there are authorized business assessments. *Municipal Act, ss. 306(1)*

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PART: GENERAL	
Subject: 1 – Important Dates and Events	
Page: Gen.1.3	Date Issued: January 2017
New:	Amendment: √

June

by 15th

File a signed copy of the municipality's Tax Levy By-Law with Municipal Finance and Advisory Services. *Municipal Act, ss.304(2)*

by 30th

Submit municipal auditor's report to council not later than June 30. *Municipal Act, ss. 190(1)*

- The auditor must include with this report the audited federal gas tax expenditure report.
- The head of council tables the auditor's report at the first regular meeting of the council after receiving the report. *Municipal Act, ss.193(2)*
- After the report is tabled, public notice must be given as soon as possible that the auditor's report and the municipality's financial statements are available for inspection at the municipal office during regular business hours. *Municipal Act, s. 194*

August

by 31st

Appoint an auditor for the current fiscal year. *Municipal Act, ss. 184(1)*

by 31st

Prepare tax roll for the current fiscal year. *Municipal Act, ss. 300(1)*

by 31st

Prepare and mail tax notice to each tax payer shown in the tax roll. *Municipal Act, ss. 302(1)*

- Correct, by resolution, the tax roll respecting businesses and impose supplementary taxes. If supplementary taxes are imposed, send a supplementary tax notice to the taxpayer. *Municipal Act, ss. 326(1), 327(1)*
- Correct, by resolution, the tax roll and cancel or reduce property taxes. If corrections to the tax roll result in a decrease in taxes, send an amended tax notice to the taxpayer. *Municipal Act ss. 300(6) (7)*

October

by 10th

Inform the minister of the name of the auditor. *Municipal Act, ss. 184(3)*

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PART: GENERAL	
Subject: 1 – Important Dates and Events	
Page: Gen.1.4	Date Issued: January 2017
New:	Amendment: √

November

by 15th

Submit application for the Manitoba Education Property Tax Credit program to the Tax Assistance Office, Manitoba Finance.

by 30th

No later than November 30th of each year, every council member shall file a statement disclosing assets and interests. (*Conflict of Interest Act*, ss. 9(1)).

December

by 31st

Close the current tax roll.

(2) On-going Occurrences

Weekly

- Deposit all monies collected on a regular basis, as directed by resolution of council.

Monthly

- Remit required amounts to:
 - Revenue Canada for Canada Pension Plan, Employment Insurance and Income Tax, by the 15th of the next month;
 - Municipal Employee Benefit Program for benefits deductions, by the 15th of the next month.
- Provide a financial statement to council at the end of each month or as directed by resolution of council.
- Ensure that members of council submit their expense accounts in sufficient time to process.
- Balance tax rolls to receipts.

Annually

- Update names, address, phone number, location, etc. of the Emergency Preparedness Plan. Advise Emergency Measures Organization and others connected with the plan of any changes.
- Review, retain or destroy municipal records. *Municipal Act, Regulation 53/97.*

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PART: GENERAL

Subject: 1 – Important Dates and Events

Page: Gen.1.5

Date Issued: January 2017

New:

Amendment: √

- Diarize and prepare debenture payment in advance of due date. When issuance of debentures is under consideration, try to coincide the payment due date with that of existing debenture(s).
- Offer any land for sale by auction to recover tax arrears and costs.
 - Review sale date and other requirements with council early in year.
 - Discuss options regarding auctioneers, conditions of sale, reserve bids and obtain instructions by council resolution.
 - Apply the excess proceeds of a tax sale to general revenue after expiry of three year application period. *Municipal Act, ss. 380(1), (2), (3) and (4)*

Events

- Manitoba Municipal Administrators Association
 - District Meeting(s) - September
 - Annual Conference - April
 - Seminars for Four-Year Certificate Course
 - Other training seminars.
- Association of Manitoba Municipalities
 - Municipal Officials Seminar and Trade Show - April
 - Mayors and Reeves Meetings - March
 - District Meetings - June
 - Annual Convention - November

Note: Book accommodation in advance for convention and conference and confirm reservations.

(3) Education Requisitions

- Payment of School Division Special Levy – *Public Schools Act, Regulation 371/88*
- Payment of Education Support Levy – *Public Schools Act, Regulation 371/88*

Regulation 371/88 – The Public Schools Act - Time of Remittance

- **Levies collected on or prior to due date:** remit on or before the end of the month following the month in which the taxes were due or within 31 days of the due date, whichever comes first. For example, if your tax due date is October 31st, you must remit the portion of education tax collected by November 30th.
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PART: GENERAL	
Subject: 1 – Important Dates and Events	
Page: Gen.1.6	Date Issued: January 2017
New:	Amendment: √

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- **Levies collected after due date:** remit on or before the end of the month following the month in which the taxes were paid.
 - **Balance of education levies:** remit so they are received by the School Division and Public Schools Finance Board on or before January 31st following the year in which the levies were apportioned.

(4) Other Reminders

- The fiscal year of a municipality is the calendar year. *Municipal Act, s. 161*
- Give public notice of sitting of Board of Revision, at least 30 days before sitting of Board of Revision. *Municipal Assessment Act, ss. 41(2), and (3)*
- Appoint to Boards, Committees, Organizations and advise by letter as to appointment, (name, address, phone number and term of appointment) in accordance with your organizational by-law.
- The inaugural meeting of council must be scheduled for no later than 30 days after the date of the general election. *Municipal Act, ss. 100.* All members of council are required to take an oath of office at the inaugural meeting.
- Review organizational by-law at least once during term of office. *Municipal Act, ss. 148(1).* Review actual appointments to committees of council annually.
- Review procedures by-law at least once during term of office. *Municipal Act, ss. 149(1).* Review and amend practices and procedures as required by council.
- Review council compensation and expense by-law prior to drafting annual budget.
- Review staff salary/wages and benefits (per agreement if applicable).
- Review by-laws for renewing of agreements (i.e. fire fighting, waste disposal, revenue sharing, etc.).

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PART: GENERAL	
Subject: 1 – Important Dates and Events	
Page: Gen.1.7	Date Issued: January 2017
New:	Amendment: ✓

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- Schedule inter-municipal meeting(s) early in the fiscal year.
 - Discuss annual financial plan with council early in the fiscal year. Set date and program for public hearing. Prepare advertisements for financial plan public hearing. *Municipal Act, ss. 420(1)*.
 - Municipal elections held every 4 years. By-elections held as directed by resolution of council. *Municipal Act, ss. 105(3)*.

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PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION	
Subject: 1 – Boundary Changes by Annexation or Amalgamation	
Page: 2.1.1	Date Issued: March 1997
New: √	Amendment:

2.1 Boundary Changes by Annexation or Amalgamation

(1) Legal Requirements

Part 2 sets out the process for changing the boundaries of existing municipalities by annexation or amalgamation.

(2) Process

A flow chart of the process for changing boundaries through annexation or amalgamation is set out in Appendix 1. The following discusses that process as it relates to when a *municipality* proposes an annexation of land or an amalgamation with another municipality.

Initiation of Proposal

Section 34 provides that a council may initiate a proposal for annexation by a municipality of land from another municipality, or for the amalgamation of two or more municipalities. Residents or electors of a municipality may not initiate a proposal for annexation or amalgamation.

Requirements of the Proposal

The proposal must be filed, in writing, with The Municipal Board. Section 35 sets out the requirements of the proposal:

- a statement of the intent of the proposal
- a description of the land to be annexed
- the reasons for the proposal
- the name of each municipality and local authority affected by the proposal

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PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION	
Subject: 1 – Boundary Changes by Annexation or Amalgamation	
Page: 2.1.2	Date Issued: March 1997
New: √	Amendment:

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- if a LUD is proposed to be formed, a description of the area of the LUD (see Part 2.3 respecting formation of LUDS)
 - a description of the process of consultation about the proposal.

Negotiation and Consultation

Section 36 requires the municipality (as the proponent) to send a copy of the proposal to the Minister and every affected municipality or local authority.

Section 37 requires the proponent to meet with affected municipalities and negotiate the proposal, and to consult about the proposal with affected local authorities and the public. The report of the negotiation and consultation is an integral component of The Municipal Board's considerations, and is discussed in a later section of this paper.

Availability of Report

Section 38 directs The Municipal Board to ensure the public availability of the report of the negotiation and consultation, to give an opportunity for a response to the report, and to ensure the sufficiency of the consultation process. A hearing must be held by the Board if a required number of objectors respond to the report, as set out in subsection 20(1).

Review by The Municipal Board

Section 39 sets out the duties and powers of The Municipal Board.

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PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION	
Subject: 1 – Boundary Changes by Annexation or Amalgamation	
Page: 2.1.3	Date Issued: March 1997
New: √	Amendment:

The Board may:

- consider the application in relation to any principles, standards or criteria established by regulation
- consider the evidence and submissions made at a public hearing held by the Board
- investigate, analyse and make findings of fact about the proposal
- for a proposed annexation, consider the viability of the municipality from which the land is being annexed
- request further study and seek further advice on the matter
- request or require a vote of affected electors, and consider the results of the vote
- do any other thing considered advisable.

The Municipal Board Report and Recommendations

Section 40 requires The Municipal Board to:

- report to the Minister, in writing, of its findings, recommendations, and reasons for the recommendations
- send a copy of that report to the proponent and the affected municipalities
- notify formal objectors and supporters that the report is available for review.

The Municipal Board's report must be available for review at the municipal office of an affected municipality. The municipality may charge a fee for a copy of the report.

The fee must not exceed fees set out in *The Freedom of Information and Protection of Privacy Act (FIPPA)* - (respecting information about fees).

Referral of Report to the Lieutenant Governor in Council

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PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION	
Subject: 1 – Boundary Changes by Annexation or Amalgamation	
Page: 2.1.4	Date Issued: February 2003
New:	Amendment: √

Section 41 requires the Minister to refer the report to the Lieutenant Governor in Council. The Lieutenant Governor in Council may:

- refer the matter to The Municipal Board for further consideration and recommendations
- give notice that no regulation will be made, or
- make a regulation to annex land from one municipality to another or to amalgamate municipalities.

(3) The Importance of Effective Consultation/Negotiation

The consultation and negotiation process required under section 37 is integral to the considerations of The Municipal Board. The report of the consultation and negotiation must describe:

- the processes used, a summary of the views expressed, and the matters agreed on and not agreed on by the participating municipalities.
- the content of the original proposal and particulars of and reasons for any amendments to the proposal made in the report.
- a list of any studies prepared by or for the proponent, and a summary of the findings of those studies.
- whether the proponent is intending to proceed with the proposal as initiated or amended.

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PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION	
Subject: 1 – Boundary Changes by Annexation or Amalgamation	
Page: 2.1.5	Date Issued: March 1997
New: √	Amendment:

The Act does not prescribe the manner in which the negotiation and consultation must be done. Therefore, the proponent is responsible for the development and implementation of a process or processes that will effectively generate the information to be reported to The Municipal Board.

When developing the process, municipalities should consider that the Board has the authority to require the proponent to remedy a deficient report before the Board proceeds with its review (section 17).

To enhance the negotiations/consultations, municipalities may consider:

- holding joint council meetings
- meeting with the boards of local authorities (ie. planning districts, school divisions)
- holding town hall meetings/open houses for the public

(4) Municipal Board Considerations for Annexation Proposal

The Municipal Board has developed policy guidelines to assist it when considering a proposed annexation. These guidelines may assist municipalities considering a proposal for annexation, and are set out in Appendix 2.

Municipal Act Procedures Manual

PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION

Subject: 1 – Boundary Changes by Annexation or Amalgamation

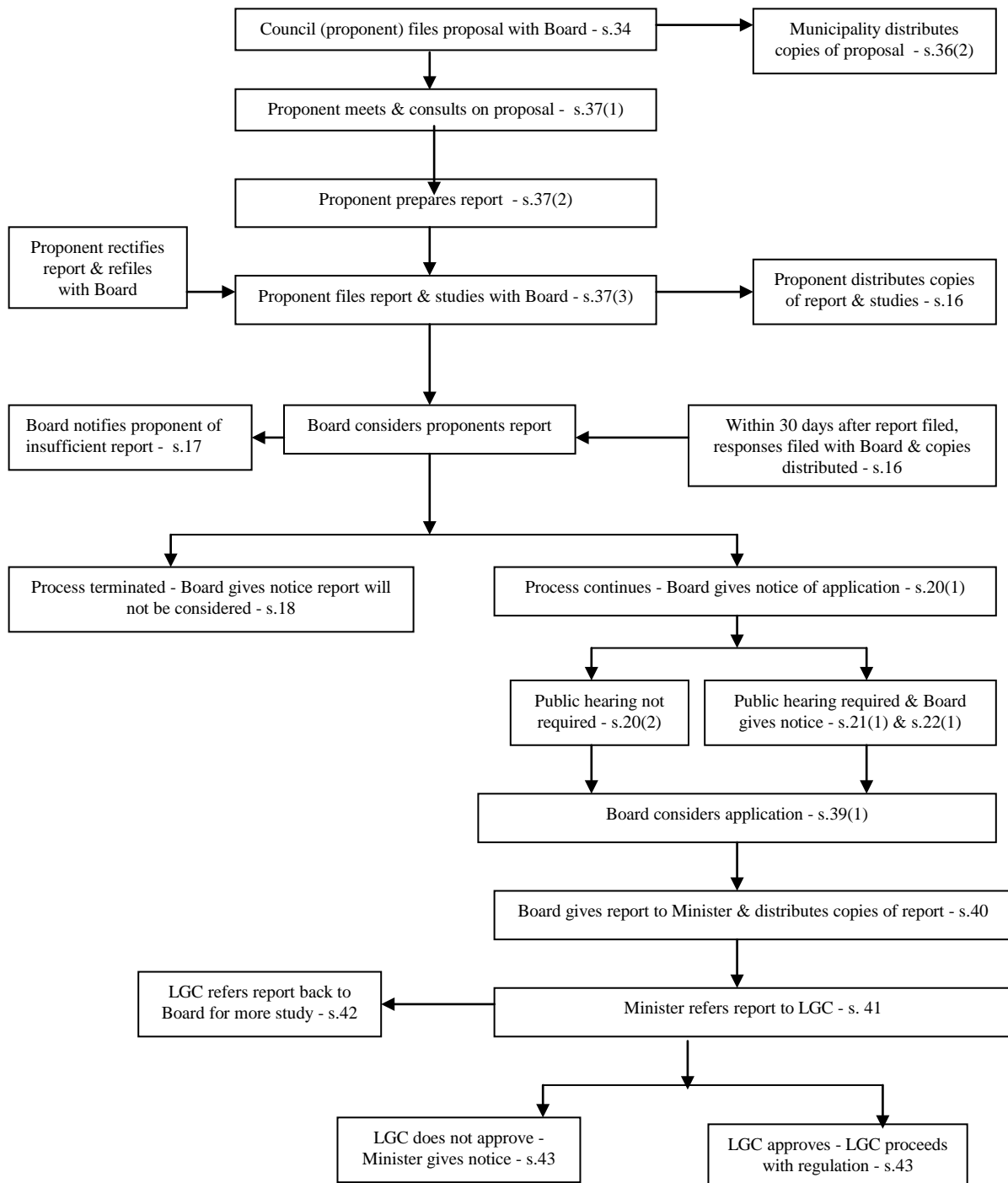
Page: 2.1.6

Date Issued: March 1997

New: √

Amendment:

Appendix 1 — Flow Chart of Process for Annexation or Amalgamation



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Subject: 1 – Boundary Changes by Annexation or Amalgamation	
Page: 2.1.7	Date Issued: March 1997
New: <input checked="" type="checkbox"/>	Amendment:

Appendix 2 — Municipal Board Policy Guidelines for Annexation

- The municipality that can best provide the needed municipal infrastructure to the residents and landowners of a particular area should normally exercise municipal jurisdiction over that area. The ability to provide water and sewer service to a particular area is a strong indicator that the area should be annexed to the municipality that provides the services.
- Residents within a particular area are under the jurisdiction of the municipality to which they have the greatest affinity or relationship. Social and economic ties to each municipality involved should be considered: to what municipality are the affected residents and property owners “a part of”?
- In general, agricultural and other rural uses should be confined to rural municipalities; urban land uses are located within urban municipalities.
- Annexation of the land needed to maintain the viability of a municipality and to enable it to fulfill its role in the broader community should be supported. An adequate inventory of suitable residential, commercial and industrial land should be available to meet potential future demand. Planning documents such as development plans should be considered in determining the role of the municipality and its future growth and planning needs.
- The will of the majority of residents and property owners of an area proposed for annexation should be accommodated.
- Geographical or natural boundaries may serve as a logical boundary line.
- A boundary line should be straightforward and easily recognizable.

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PART: 2 – FORMATION, FUNDAMENTAL CHANGES AND DISSOLUTION	
Subject: 2 – Local Urban Districts	
Page: 2.2.1	Date Issued: January 2017
New:	Amendment: √

2.2 Local Urban Districts (LUD's)

(1) What is a LUD?

A LUD is an unincorporated urban area with a population of at least 250 residents, located wholly within the boundaries of a rural municipality. It is represented by a formal committee of council, comprised of not more than three members elected by the LUD electors at a general election, and a member of the rural council. The LUD is serviced by the rural municipality, as provided for in the LUD service plan which details the type, level and cost of municipal services to be provided. It is funded through a levy against the district as specified in the service plan.

Using a LUD levy is only one way to service an urban like area in a rural municipality. Many rural municipalities are now considering or already using special service by-laws to provide the same services. For more information on special service by-laws, please refer to Part 10 of this manual.

(2) Legal Requirements

Formation Criteria

Criteria to form a LUD are set out in section 56:

- at least 250 residents;
- a population density of at least 400 residents per square kilometre or such other density as the Minister considers sufficient to support the services to be provided to the LUD;
- is wholly within the boundaries of a rural municipality; and
- is contiguous with the rest of the locality.

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Page: 2.2.2	Date Issued: April 2005
New:	Amendment: √

Formation Process

Rural municipalities are encouraged to investigate other means to service urban -like areas within their boundaries prior to considering the formation of a LUD. A LUD is legally defined and, for this reason, it can be difficult to make boundary adjustments or to dissolve. Other options such as a Special Services by-law can be a more flexible tool than a LUD.

However, if council is interested in pursuing the formation of a LUD, the process is:

- initiation by a petition to council by the majority of electors in the locality subsection 57(1) [Also refer to Part 5.6, Petitions.]
- negotiation between the proposed LUD and the council - section 58
- if agreement through negotiation, submission of the request by council to the Minister - section 59 ; if no agreement, submission to The Municipal Board for review and referral to the Minister - subsections 60(1) and 60(2)
- referral by the Minister to the Lieutenant Governor in Council - section 61\
- regulation by the Lieutenant Governor in Council - section 64

Boundary Adjustment Process

Council may wish to amend the boundaries of an LUD to accommodate changes in land use including new development. The process for adjusting the boundaries of a LUD is set out in section 65:

- the LUD committee submits to council a request that sets out the proposed amendment - section 65(1).
- negotiations between the LUD committee and the council - section 58 (*It is the responsibility of council to ensure the proposed expansion of the LUD is in the best interest of the municipality at large and supported by a majority of electors. Information letters and community meetings are excellent ways to keep the electorate involved and informed*).

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Subject: 2 – Local Urban Districts	
Page: 2.2.3	Date Issued: April 2005
New:	Amendment: √

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- if agreement through negotiation, submission of the request by council to the Minister - section 59; if no agreement, submission of the Municipal Board for review and referral to the Minister - subsections 60(1) and 60(2).
 - referral by the Minister to the Lieutenant Governor in Council - section 61
 - regulation by the Lieutenant Governor in Council - section 64

Dissolution of a LUD

Some rural councils have found that the LUD structure no longer works for their municipality and have formally dissolved the LUD. The process to dissolve a LUD is set out in section 66 and may be initiated by either:

- a sufficient petition of 2/3 of the electors of the LUD submitted to the council. The petition must, in turn, be referred to the Minister.
- a request to the Minister by the council if, in two consecutive general elections there are not at least two persons nominated for election to the LUD committee.

The Lieutenant Governor in Council may dissolve a LUD, on referral of the petition or the request by the Minister. Once dissolved, a LUD may not be re-established for six years.

(3) LUD Operations

Refer to Part 3.4, “Operation of Local Urban Districts”, for further discussion on LUD operations.

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PART: 3 – COUNCILS	
Subject: 1 – General Municipal Election Calendar	
Page: 3.1.1	Date Issued: April 2022
New:	Amendment: √

3.1 General Municipal Elections

(1) Legal Requirements

The Municipal Act and *The Municipal Councils and School Boards Elections Act* provide direction respecting municipal elections:

- *The Municipal Act* sets out the framework for the election of municipal officials including campaign finance rules. It establishes requirements for the qualifications for candidates, the criteria for division into wards, nomination and term of office. The Act also provides direction for employees of municipalities wishing to seek election to a municipal council, and the rules of disqualification.
- *The Municipal Councils and School Boards Elections Act* provides step-by-step direction for the general election process. To avoid any challenges to an election, it is very important that the election be conducted according to the rules and regulations of the Act.

(2) Election Dates

For general municipal elections, manuals entitled “Election Official’s Manual” and the “Chief Administrative Officer’s Campaign Financing Manual” are provided for use by election staff and CAOs. For detailed information regarding the administration of local elections or by-elections, please consult the manuals.

The next General Municipal Election is Wednesday, October 26, 2022.

(3) Resort Municipality Elections

The next General Municipal Election in the three resort municipalities of the Village of Dunnottar, the Rural Municipality of Victoria Beach and the Town of Winnipeg Beach is Friday, July 22, 2022, and therefore follows a different timetable.

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PART: 3 - COUNCILS

Subject: 1 - General Municipal Election Calendar

Page: 3.1.2

Date Issued: October 2011

New:

Amendment: ✓

(4) Critical Timing for a Municipal By-election

The process for holding a by-election is triggered once the Senior Election Officer (SEO) receives a request from Council under subsection 105(3) of *The Municipal Act*. Council's request also marks the start of the Campaign Period which continues until 90 days after Election Day. Only registered candidates can collect contributions and spend money on their campaign during the Campaign Period.

Once the request to hold a by-election is received, the SEO will provide notice of the date, time and place where candidates can register. It is recommended that SEOs provide notice as soon as reasonably possible.

The SEO must also publish a notice of nomination or distribute nomination notices to all households in the municipality. Once this is done, there are legislative timelines for subsequent events leading up to Election Day.

The following table sets out the critical timing for a by-election commencing from publication/distribution of the nomination notice. To assist in scheduling election events, work backwards from the by-election day to determine when the election activity is to take place. Keep in mind the entire by-election process requires a minimum of 50 days.

Critical Timing for By-elections	
Day 1	Publish or mail / distribute to every household nomination notice MCBEA s. 4 & 41(1) & (2) (not less than 7 days but not more than 21 days before nomination period begins)
Day 8-14	Nomination Period MCSBEA s. 48(2) Registration period ends at the close of the nomination period MA 93.3(1)
Day 16 or later	Publish or mail / distribute election notice to every household MCSBEA s. 48(2) (as soon as reasonably possible)
Day 50	Election Day MA ss. 105(1)
Day 140	Campaign Period ends MA ss. 93.1(1)(b)
No later than 210 days after the Election Day (Specific deadline will be in municipality's Campaign Expenses and Contributions By-law)	Filing of Election Finance Statement MA ss. 93.12

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PART: 3 – COUNCILS	
Subject: 2 – Wards for Election Purposes	
Page: 3.2.1	Date Issued: February 2003
New:	Amendment: √

3.2 Wards for Election Purposes

(1) Legal Requirements

Subsection 87(1) provides that municipalities (urban or rural) may elect councillors “at large” or by the ward system. (The head of council is always elected “at large.”) Subsections 87(2) through 87(5) provide that:

- to hold elections on the basis of the wards, municipalities are required to pass a ward by-law.
- the ward by-law comes into effect at the next general election and must be passed at least 180 days before the next general election.
- council must give public notice of a proposed ward by-law before third reading. Public notice requirements are set out in subsections 420(3), (4) and (5). For additional information about notice requirements, refer to Part 14.1, Public Notices.
- the ward by-law must divide the municipality into wards, establish the boundaries of the wards, and name or number the wards.

(2) Establishing Ward Boundaries

Section 88 defines the criteria for dividing a municipality into wards, or to change the number of wards or the ward boundaries. Council:

- *must try to achieve an equal number of residents in each ward*, by dividing the population of the municipality [“population” is defined in subsection 1(3)], by the proposed number of wards, for example: **3,000 (population) ÷ 4 (proposed number of wards) = 750 (residents in each ward)**, and

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New:	Amendment: √

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- *may also consider:*
 - community or diversity of interests (*defined residential localities within the municipality*)
 - topographical features (*rivers, roads, etc. that naturally divide the municipality*)
 - settlement patterns (*within a particular area of the municipality*)
 - population trends (*growth/decline in population in the municipality within the past number of years, anticipated in future years*).

The above provisions may be a predominant feature in your communities such that achieving equal numbers of residents in each ward would not be practicable.

A Municipal Services Officer can offer assistance in implementing or revising wards.

(3) Review of Ward Boundaries

From time to time, due to fluctuations in population, council is encouraged to review the ward by-law. Amendments to the ward by-law must be passed at least 180 days before the general election at which they are to take effect [subsection 87(3)].

Section 89 provides that The Municipal Board may be requested to review a ward by-law at the written request of at least 25 electors, and that the Board:

- must hold a public hearing [subsection 89(2)]
- may refer the matter back to council or require council to amend the by-law as directed by the Board [subsection 89(3)].

(4) Eliminating Wards

To eliminate wards, council must follow the same steps which it took to implement the ward by-law, [(subsection 147(1)(2) of *The Municipal Act*].

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Page: 3.2.3	Date Issued: February 2003
New:	Amendment: √

A by-law to dissolve wards would take effect at the next general election, and the by-law must be passed at least 180 days before the general election at which it is to take effect. The council must give public notice of the proposed by-law before third reading. The requirement of the public notice is provided in subsection 420(3)(4) of *The Municipal Act*.

A by-law to eliminate wards may be reviewed by The Municipal Board, if requested in writing by at least 25 electors of the municipality.

The Municipal Board must hold a hearing when it conducts a review.

(5) Samples

A sample public notice for the ward by-law is attached, as Appendix 1.

A sample ward by-law is attached, as Appendix 2.

A sample by-law to eliminate wards is attached, as Appendix 3.

**Municipal Act
Procedures Manual**

PART: 3 – COUNCILS

Subject: 2 – Wards for Election Purposes

Page: 3.2.4

Date Issued: March 1997

New:

Amendment: √

Appendix 1 — Sample Public Notice of Proposal to Pass a Ward By-law

(Name of Municipality)

PUBLIC NOTICE

REGARDING THE INTENTION TO GIVE

THIRD READING TO A BY-LAW

TO ESTABLISH A WARD SYSTEM

PUBLIC NOTICE is hereby given pursuant to subsection 87(4) of *The Municipal Act* that the Council of the (name of municipality) intends to give third reading to a by-law establishing a ward system for the purpose of holding a municipal election.

The third reading of the by-law is scheduled to be given at the next regular meeting of Council to be held in the Council Chambers of the (name of municipality), on the (day)(month)(year) at (time, a.m. or p.m.).

Copies of the by-law to establish a ward system for the purpose of holding a municipal election are available for review and may be examined by any person during the regular office hours of the municipal office at (location of municipal office).

B. Jones
Chief Administrative Officer
(Name of Municipality)

January 13, 1997

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PART: 3 – COUNCILS

Subject: 2 – Wards for Election Purposes

Page: 3.2.5

Date Issued: March 1997

New:

Amendment: √

Appendix 2 — Sample Ward By-law

(Name of Municipality)

By-law No. _____

Being a by-law to establish a ward system for the purpose of electing municipal councillors.

WHEREAS subsection 87(1) of *The Municipal Act* provides as follows:

“Every member of a council is to be elected by a vote of the electors of the whole municipality unless the council by by-law provides that the councillors are to be elected on the basis of wards”;

AND WHEREAS it is deemed necessary and desirable to establish a ward system to elect municipal councillors;

NOW THEREFORE the council of The (name of municipality) enacts as follows:

- 1) THAT The (name of municipality) be divided into four wards, as per attached Schedule “A”; **(attached Schedule “A” should be a map and / or legal description of the ward boundaries)**
- 2) THAT the four wards be named as follows: 1) Riel Ward, 2) Winnipeg Ward, 3) Portage Ward, 4) River Ward;
- 3) THAT this by-law takes effect at the next general election.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith, Head of Council

(Municipal Seal)

B. Jones, Chief Administrative Officer

Read a first time this (day) of (month) (year).

Read a second time this (day) of (month) (year).

Read a third time this (day) of (month) (year).

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PART: 3 – COUNCILS

Subject: 2 – Wards for Election Purposes

Page: 3.2.6

Date Issued: February 2003

New:

Amendment:

Appendix 3 - Sample By-law to Eliminate Wards

(Name of Municipality)

By-law No. _____

Being a by-law to dissolve By-law No. _____ establishing wards within the (name of municipality).

WHEREAS subsections 147(1)(2) of *The Municipal Act* provides as follows:

147(1) The power to pass a by-law under this or any other Act includes the power to amend or repeal the by-law;

147(2) The amendment or repeal of a by-law is subject to the same requirements that apply to passing the by-law, unless this or any other Act expressly provides otherwise;

AND WHEREAS it is deemed necessary and desirable to repeal By-law No. _____ and to dissolve the wards established to elect members of council for the (name of municipality);

NOW THEREFORE be it resolved that the council of the (name of municipality) enacts as follows:

- 1) THAT By-law No. _____ of the (name of municipality) be hereby repealed.
- 2) THAT this by-law take effect at the next general municipal election.

DONE AND PASSED as a by-law of the (name of municipality) at (location of office) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year)
Read a second time this (day) of (month) (year)
Read a third time this (day) of (month) (year)

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PART: 3 – COUNCILS	
Subject: 3 – Oath of Office for Elected Officials	
Page: 3.3.1	Date Issued: January 2017
New:	Amendment: √

3.3 Oath of Office for Elected Officials

(1) Legal Requirements

Subsection 101(1) requires each member of council to take an oath of office after being elected at a general election or by-election obligating the faithful execution of the responsibilities of office, and to file the oath with the chief administrative officer.

Subsection 101(2) provides that if the oath is not taken within 30 days after being elected, the position to which the person is elected is deemed vacant and the person is disqualified from being nominated for, elected to, and being a member of council until the next general election.

A member of council may not exercise the powers, duties or functions of the office until that member takes the oath.

(2) Approved Oath of Office

The oath of office approved by the minister of Municipal Relations is attached.

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Page: 3.3.2	Date Issued: February 2003
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OATH OF OFFICE FOR MEMBERS OF COUNCIL

I, _____, (full name of person taking oath) do solemnly declare

1. That I am a Canadian Citizen.
2. That I am of the full age of 18 years.
3. That I am an elector of (name of municipality).
4. That I am a resident of the Province of Manitoba.
5. That I am not disqualified under any provision of *The Municipal Act* or any other Act of the Legislature from being a member of the council of (name of municipality).
6. That I will act faithfully in the office of (name of office) without fear, favour, or affection and will truly, faithfully, and impartially, and to the best of my knowledge and ability execute the duties and responsibilities of that office.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of *The Canada Evidence Act*.

Sworn (or affirmed) before me)
at the _____ of _____)
in the Province of Manitoba)
this (day) of (month) (year).)

(signature of person taking oath)

A Commissioner for Oaths
(or as the case may be)

Municipal Act Procedures Manual

PART: 3 – COUNCILS	
Subject: 4 – Operation of Local Urban Districts	
Page: 3.4.1	Date Issued: January 2017
New:	Amendment: √

3.4 Operation of Local Urban Districts (LUD's)

(1) Operational Framework

Part 3, Division 5 sets out the operational framework for a LUD and the municipality in which the LUD is located. This framework deals with:

- committee structure and status
- procedures of the committee
- duties and responsibilities of the committees
- duties of the municipal council
- dispute resolution

(2) Legal Requirements

Structure and Status of a LUD Committee

Section 112 sets out the status of a LUD committee as a formal committee of council, comprising:

- a councillor of the municipality appointed by the council (if elected on a ward basis, the appointee must be the councillor elected for the ward in which the LUD, or most of the local urban district, is located) and
- a minimum of two or a maximum of three members elected by the LUD, at the general election. (The number of elected members is determined through discussion between the representative of the petitioners for formation of a LUD and the council. It is recommended that this decision be formalized by a resolution of council).

Subsection 113(2) sets out the provisions that apply to the election of members to a LUD committee.

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PART: 3 – COUNCILS	
Subject: 4 – Operation of Local Urban Districts	
Page: 3.4.2	Date Issued: February 2003
New:	Amendment: √

Disqualification

Subsection 94(1) of *The Municipal Act* states that a member of a council is disqualified from council if he or she

(a)

(b) is the councillor appointed to the committee of a LUD under clause 112(1)(a) and is absent for the full duration of three consecutive regular committee meetings unless the absences are with the leave of the committee granted by a resolution of the committee passed at any one of the three meetings, a prior meeting or the next meeting following the third absence.

Procedures of a LUD Committee

Section 114 requires a LUD committee (by resolution) to pass rules of procedure and review the rules of procedure at least once during its term of office. The LUD committee must govern itself by its rules of procedure.

In developing rules of procedure, a LUD committee may wish to review the municipality's procedures by-law and refer to Part 5.4, "Procedures By-law" of this manual.

Duties and Responsibilities of a LUD Committee

Sections 115 and 116 set out the duties of a LUD committee:

- the same duties to the district as councillors have to the municipality
- to establish by resolution the types, rates and conditions of payments for member compensation and expenses.

Section 117 sets out the responsibilities of a LUD committee:

- to develop a service plan for the district, and submit the plan to council before the council adopts its operating and capital budget. (Refer to section (3) for detailed information regarding preparation of a service plan)
- to exercise the powers delegated to it by the council of the municipality within the restrictions established by subsection 117(2).

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PART: 3 – COUNCILS	
Subject: 4 – Operation of Local Urban Districts	
Page: 3.4.3	Date Issued: February 2003
New:	Amendment: √

Duties of the Municipal Council

Subsection 120(1) sets out the duties of the municipal council respecting LUD's:

- to consult with the LUD before adopting its annual financial plan
- to adopt the service plan as submitted by the LUD
- to levy taxes against the district as specified in the service plan
- to provide services and pay the costs of the LUD according to the service plan
- to keep separate record of all money received and disbursed for the services provided for in the plan
- to provide the LUD a current statement of money received and disbursed in relation to the service plan

Subsections 120(2) and (3) provide for the procedure if the tax revenue is insufficient to provide the services as requested by the LUD, or alternatively, if the tax revenue exceeds the costs to provide the services.

Resolution of Disputes

Wherever possible, disputes between a LUD committee and a municipal council should be resolved internally, through discussion between the committee and the council. Local assistance from an independent third party to resolve the dispute may also be sought for example, through a ratepayer, a mediation counsellor, or a municipal services officer.

If local attempts to resolve the dispute prove unsuccessful, the committee or the council has formal recourse under section 122, where disputes about the type, level or delivery of services, or the amount or sufficiency of the tax levy may be referred to the minister. The minister may then refer the dispute to The Municipal Board, which has jurisdiction to hear the matter.

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PART: 3 – COUNCILS

Subject: 4 – Operation of Local Urban Districts

Page: 3.4.4

Date Issued: April 2005

New:

Amendment: √

(3) Preparation of a Service Plan by a Local Urban District (LUD)

Purpose of Service Plan

The LUD committee must prepare an annual service plan. The Plan is a written document that describes the type, level and cost of services provided within the LUD boundaries. Once approved, the Plan is submitted to council for review. **It is the municipality that will ensure the services are delivered and revenues are raised in accordance with the Plan.** As a committee of council, the LUD has no authority to provide direct delivery of service or to manage funds on its own.

Preparation of the service plan provides an opportunity for the LUD Committee to clearly outline its service requirements. A well prepared plan will give sufficient direction to the municipality to ensure that services are delivered at a level, and in a way that meets the expectations of the LUD and its citizens.

Content of Service Plan

Section 118(2) states that the LUD must prepare a service plan every year, which includes:

- a description of the proposed type and level of services to be provided in the LUD
- the area of the LUD to which each of the services will be provided
- the services that are to be paid for by a tax imposed on property within the LUD
- an operating budget and a capital budget for the anticipated costs of the services which includes the costs of operation of the LUD committee
- any proposed local improvement or special service to be initiated in the LUD under Division 4 (Local Improvements and Special Services) of Part 10 (Powers of Taxation).

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PART: 3 – COUNCILS	
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New:	Amendment: √

When the LUD has prepared a service plan (and prior to adopting the plan by resolution), the LUD must consult with council. This must be done prior to council adopting its annual operating and capital budgets. In that regard, the LUD may wish to have the Plan prepared early in the year in order to have discussions with council well in advance of statutory deadlines for public hearing and budget adoption.

Authorized Services

Subsection 118(1) defines the service or services that may be delivered by a municipality on behalf of a LUD. The municipality may determine the most appropriate method of service delivery, e.g. by using municipal resources or contracting the services as appropriate. Under subsection 117(2) a municipality cannot delegate power to a LUD to enter into a contract or administer a service. In that regard, a LUD alone cannot manage funds or administer or deliver any of the services outlined in the Service Plan.

Services, as authorized under the Act includes **acquisition, development, upgrade, renewal, maintenance or operation** of any of the following:

- sewage collection, treatment and disposal facilities
- water supply, treatment and distribution facilities
- waste management facilities
- municipal roads
- sidewalks
- street lights
- public parks

While there are numerous services that may be provided within the limits of this authority, most LUD committees are responsible for one or two of these services only.

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PART: 3 – COUNCILS	
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Page: 3.4.6	Date Issued: February 2003
New:	Amendment: √

Sewage and water supply facilities are normally provided under separate utility funds that are managed by the municipality, and are subject to approval of the Public Utilities Board. **If these or any of the authorized services are to be provided by local improvement or special services levy, notation should be made in the service plan without reference to costs.** Costs will be included in the Financial Plan of the municipality. It is recommended that discussions occur between the council and the LUD regarding the necessity for and provision of the requested service by means of local improvement or special services levy.

Preparation and Implementation of Service Plan

The LUD committee has an important responsibility to prepare a comprehensive and well-researched service plan. This is the document that will facilitate delivery of efficient and effective service to the citizens of the LUD.

The Plan should be based on a comprehensive analysis of financial affordability and sustainability, including projected service costs and tax levels.

The document cannot be prepared in isolation. The committee will want to ensure that both council and the citizens affected by a LUD service plan are consulted, and made aware of the planning as it progresses.

The following steps are recommended to ensure an open, clear process:

i) Establish Communication Procedure

If the chief administrative officer (CAO) does not regularly attend LUD committee meetings, the LUD will want to establish communication with the CAO early in the term. The CAO may opt to designate a Public Works employee to meet regularly with the LUD and advise the committee during preparation of the service plan. If agreeable to the LUD, this is a perfectly acceptable practice and would be reasonable in small communities with few staff. While the Public Works employee will be knowledgeable about infrastructure issues, it is also important that the CAO be available to the LUD. The CAO is a key person in the discussion of service delivery options and the cost of providing services. For instance, if the LUD has ideas about generating revenue from other than the general tax base, or wishes to explore the possibility of providing new services, these discussions are most appropriately held with the CAO and then council.

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Page: 3.4.7	Date Issued: February 2003
New:	Amendment: √

The councillor appointed to the LUD committee has the role of communicating with council regarding the activities of the committee. The councillor should provide a regular report to council. Additionally, if the LUD requires council approval for any reason (such as the reallocation of funds after the Service Plan has been approved), the LUD councillor should ensure that the matter is dealt with at a regular council meeting.

Council's appointee will also want to facilitate discussions regarding the resolution of any disagreements between the LUD and council with respect to the Plan. Council and the LUD should take the time to discuss the manner in which LUD members may obtain timely information, when or if there is a problem with delivery of services.

Section 109 requires that minutes be taken of all meetings of the committee. These minutes are to be available to the public and should be routinely submitted to council for information.

ii) Drafting the Service Plan

When the LUD Committee has prepared a draft service plan in the format recommended in Appendices 1 and 2, it should meet with council to review the Plan. This will be the opportunity for both parties to clarify a number of issues, including:

- any capital or Local Improvement Projects proposed by the committee
- how the services will be delivered, e.g. by municipal staff, private sector contracts, or other means of delivery
- level of services, e.g. frequency, amount, type, etc.
- schedule for completion of services
- the manner in which service delivery will be monitored and evaluated, e.g. a report from the private sector contractor or public works staff to the LUD committee when capital projects are completed
- process for resolving any disagreements related to services which are not delivered to the standards outlined in the plan

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Page: 3.4.8	Date Issued: February 2003
New:	Amendment: √

iii) Authorization of the Service Plan

When the service plan is completed to the satisfaction of the LUD and discussions have occurred with council, it must be adopted by resolution, first by the LUD committee and then council. Once approved, the contents of the service plan will be included in the Financial Plan of the municipality. If authority is required for expenditure of any funds prior to adoption of the Financial Plan, this should be noted in the municipal interim operating budget (section 163).

If, following adoption of the service plan it becomes apparent to council that there is insufficient tax revenue to deliver the authorized services, it must notify and meet with the LUD committee. If the LUD agrees, a decision could be taken to reduce a specified service, deliver it in a more efficient manner, or to eliminate it. If hardship would be created by this course of action, council could instead opt to “lend” funds to the LUD. This would create an operating deficit in the LUD budget, which could be recovered by levy of additional taxes in the next tax year, or over a maximum three year period. This would allow the LUD to complete a service in the current year, while allowing up to 3 subsequent years to raise sufficient revenue to repay the municipality.

On the other hand, if there are more taxes collected than are necessary for providing the services in the Plan, such funds must be set aside for future service in the LUD or refunded to LUD taxpayers.

iv) Maintenance of the Service Plan

The following is a recommended strategy for communication between council, the public and the LUD:

- posting of LUD committee agendas for the benefit of the public
- regular reports at council meetings by the appointed LUD council member regarding the activities of the LUD, including content of the service plan and completion of services as they occur
- adoption of a resolution by the LUD committee to guide the LUD council member in presenting requests to council for consideration and action as appropriate
- involvement of municipal staff at LUD committee meetings to respond to questions and assist in planning future service plans

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- attendance at the Financial Plan hearing by LUD committee members to respond to questions from members of the public
 - preparation of a financial statement by the municipality in accordance with subsection 120(1)(f) to assist the LUD in monitoring service delivery and preparing future service plans

A sample LUD service plan is attached as Appendix 1.

Preparation of the Capital and Operating Budget

The sample budget form, set out in Appendix 2, will assist LUD committees in preparing the budget documents required under subsection 118(2)(d).

Other References

Refer to Part 2.2 for discussion regarding formation of LUDs and Part 3.4.1 - 3.4.3 regarding operation of LUDs.

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Appendix 1 – Local Urban District Service Plan Outline

LOCAL URBAN DISTRICT SERVICE PLAN

Rural Municipality of _____

Local Urban District of _____

Service Plan for the Year _____ Date Discussed with Council _____

Date Adopted by LUD _____ Resolution # _____

Date Adopted by Council _____ Resolution # _____

Preamble

This is not mandatory, but could include a statement of goals and operating objectives for the current year.

General Government Services

Cost of Operating the LUD Committee

Compensation--\$

This section should indicate if the indemnity proposed to be paid to committee members is the same level or less than that paid to members of council. The indemnity cannot be more than what is paid to members of council (subsection 116(3)).

Expenses--\$

Anticipated expenses of the committee should be included, such as mileage, attendance at training or conference sessions, materials for meetings and any other expenses permitted by council's by-law.

Total General Government Services--\$

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Transportation Services

Road Construction

The following should be included:

- location of the area (by map, legal description, road name if available) where new road construction will occur;
- specifications of the work, e.g. “depth of underlay, asphalt or concrete road surface, number of miles”;
- scheduling of the work, e.g. “as soon as weather permits to accommodate new school bus route by September 1”;
- how service is to be provided (municipal, private contract, other);
- location and details regarding signage, if required;
- if the service is to be provided by a tax imposed on property within the LUD, local improvement or special services proposal.

Budget for road construction--\$

Road Maintenance

- name of the streets where road maintenance will occur (include location on map);
- specifications of the work e.g. “gravelling, resurfacing, sealcoating”;
- scheduling of the work e.g. “as soon as weather conditions permit in the spring”;
- frequency of the work e.g. “gravelling will be done no more than twice a year or sealcoating will be done no more than once a year on the specified roads”
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD, or special services proposal.

Budget for road maintenance--\$

Sidewalks

- location where sidewalks will be constructed or repaired (include location on map);
- specifications of the construction work, e.g. concrete, or asphalt overlay of the shoulder of the road, number of metres;
- specifications of the maintenance work, e.g. replacement of asphalt overlay with bedded concrete, or repair of all cracks and tripping hazards;
- location and details regarding signage, if required;
- how service is to be provided (municipal, private contract, other);

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- if the service is to be provided by a tax imposed on property within the LUD, or special services proposal.

Budget for sidewalk capital--\$

Budget for sidewalk maintenance--\$

Drainage

- location of the drainage areas;
- provision for monitoring and inspection of drainage courses, e.g. “ Superintendent of Public Works will inspect as soon as weather conditions permit in the spring and repair any damage as required”;
- cost of cleaning drainage systems and the areas authorized for cleaning e.g. “half of all drainage areas to be cleared annually commencing in this year with the southern half of the LUD”;
- any proposal for new drainage courses and locations;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD, local improvement or special services proposal.

Budget for drainage maintenance--\$

Budget for drainage capital--\$

Dust Control

- name of the streets on which dust control will be applied (include location on map);
- specifications, including the number of applications annually, or e.g. “upon receipt of complaints from ___% of affected residents”;
- type of application, e.g. water only, oil only, or highest grade dust abatement;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for dust control--\$

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Street Cleaning

- name of the streets that will be cleaned (include location on map);
- priority for cleaning specified streets, e.g. “streets in the commercial core, namely the area bounded by the streets known as _____, shall be cleaned before other streets in the LUD”;
- scheduling of the work, e.g. “on the basis of need or, ___ number of times a year including once right after the “Springtime Festival”;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for street cleaning--\$

Snow and Ice Removal

- name of the streets that will be subject to snow removal, e.g. “all streets in the LUD” (include location on map);
- priority for clearing specified streets, e.g. “Streets providing access to and from the fire hall, hospital, and police station, namely _____, will be given priority for snow clearing at all times. Residential streets will be cleared when travel becomes restricted as determined by the Superintendent of Public Works or following a snowfall of ___ cm or more. Alleyways will not be subject to snow removal until there is an accumulation of at least ___ cm of snow”;
- timeframe “e.g. clearing to commence no more than ___ days following an eligible snowfall on residential streets and ___ days on alleyways following an eligible snowfall”;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for snow and ice removal--\$

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Grass Cutting

- name of the boulevards and properties that will be subject to grass cutting (include location on map);
- scheduling of the work e.g. “ basis of need, e.g. when grass reaches __ cm of growth or, __ number of times a month commencing in May through October only”;
- specifications of the work, e.g. grass to be cut no shorter than __ cm from soil level;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for grass cutting--\$

Street Lighting

- cost as per municipal contract with Hydro

If new lighting is to be installed, the following may apply:

- name of the streets on which streetlights are to be located (include location on map);
- type of lighting to be installed;
- whether painting of lamp standards is required;
- replacement or proposed installation of new streetlights and location;
- the distance in meters between each lamp standard;
- date of approval from Hydro as to the nature and manner in which the work is proposed to be undertaken;
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for street lighting maintenance --\$

Budget for street lighting capital--\$

Total Transportation Services--\$

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Environmental Health Services

Garbage Collection

- area of the LUD where garbage collection is provided, e.g. “all residential streets and commercial areas bounded by the streets known as _____.”
- schedule for removal of waste e.g. “garbage pick-up will be ____ per week in residential areas, and ____ per week in commercial areas ”;
- proposed improvements to service e.g. “purchase of new garbage containers for the commercial core”;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for garbage collection--\$

Recycling

- area of the LUD where recycling is provided;
- cost to provide recycling bins;
- schedule for pick-up, “e.g. ____ number of times a month”
- proposed changes to improve service or modify the existing schedule;
- how service is to be provided (municipal, private contract, other);
- cost of operating the service per the terms of any existing contract;
- any cost recovery initiatives, such as from the purchase of recycling bins by commercial or residential users, or both;
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for recycling--\$

Total Environmental Health Services--\$

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Environmental Development Services

Weed Control

- name of the areas that will be subject to weed control;
- specifications of the work, e.g. whether chemicals should be used and if so, for what type of weeds;
- whether chemicals should not be used in certain specified areas, with reliance on manual weeding only;
- scheduling of the work e.g. “as determined by the Superintendent of Public Works, as soon as required in the spring season, when a designated type of weed reaches a certain height, or immediate removal of a designed type of weed as soon as it appears”;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for weed control--\$

Total Environmental Development Services--\$

Recreation and Cultural Services

Public Parks

The following information should be included:

- cost to acquire land for new park;
- proposal for installing trails, landscaping, picnic amenities, washrooms etc. in new or existing parks and details of each identified project;
- schedule for annual maintenance (weeding, grass cutting,) in new or existing parks;
- specifications for maintenance, e.g. removal of certain types of weeds only, grass cutting in playground portions of parks only
- details of repairs required in each identified park;
- how service is to be provided (municipal, private contract, other);
- if the service is to be provided by a tax imposed on property within the LUD or special services proposal.

Budget for parks--\$

Budget for parks capital--\$

Total Recreation and Cultural Services--\$

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Sewage Collection, Treatment and Disposal Facilities or Water Supply, Treatment and Distribution Facilities

The above mentioned utilities are typically managed by the municipality and require approval of the Public Utilities Board. The LUD could include information from Page 6 of the Financial Plan of the municipality if there is a utility that is located in and provides service to the LUD. If maintenance or construction of a new or existing service is required, this could be discussed with council and notation made in the service plan regarding the proposal.

Transfers

Included under this section could be the LUD's contribution toward purchase of equipment to be used for provision of services to the LUD, or contribution towards the cost of construction of recreation facilities, etc. Any capital asset/s acquired in partnership with the LUD will belong to the municipality.

Reserve Funds

The LUD may wish to establish one or more reserve funds for any of its authorized services such as "future park acquisition, acquisition of a grader, or installation of recycling facilities at a landfill". Council must by by-law establish one or more reserve funds as requested by the LUD in its service plan. A statement should be included regarding whether the reserve is to be established from a tax imposed on property within the LUD.

Closing Statement

A closing statement is not mandatory, but is recommended. This section could advise of the total budget for LUD services and the likely impact on taxation levels for LUD property owners. If there will be an increase in taxes, an explanation for the increase could be provided.

This section is also important as a means of communicating to citizens and to council about any potential plans (if any) the LUD may have for providing additional services in future years. In that sense the LUD document is also a planning tool for evaluation and discussion of future needs of the district.

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Page: 3.4.18

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New:

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Appendix 2 — Sample LUD Budget

BUDGETED REVENUE AND EXPENDITURE				
Municipality of _____		LUD of _____		
For the Year _____				
EXPENDITURE				
	Last Year Budgeted	Last Year Actual	This Year Budgeted	Next Year Budgeted
General Government Services				
Legislative (Indemnities)	6,150.00	6,150.00	6,150.00	7,150.00
Total General Government Services	6,150.00	6,150.00	6,150.00	7,150.00
Transportation Services				
Roads and Streets	112,785.00	101,045.00	131,000.00	135,000.00
Sidewalks and Boulevards	5,000.00	4,271.00	5,000.00	5,000.00
Ditches and Road Drainage	3,000.00	3,150.00	3,500.00	3,500.00
Street Cleaning	1,500.00	1,450.00	1,500.00	1,500.00
Snow and Ice Removal	4,800.00	4,225.00	4,800.00	5,000.00
Street Lighting	1,900.00	1,875.00	1,900.00	2,000.00
Other <u> </u> GST	300.00	296.00	300.00	500.00
Total Transportation Services	129,285.00	116,312.00	148,000.00	166,000.00
Environmental Health Services				
Garbage Collection	16,500.00	16,058.08	16,500.00	16,500.00
Nuisance Grounds	2,000.00	1,664.14	2,000.00	2,000.00
Total Environmental Health Services	18,500.00	17,722.22	18,500.00	18,500.00
Environmental Development Services				
Weed Control	3,000.00	3,285.18	3,500.00	3,500.00
Other <u> </u> Grass Cutting	500.00	504.82	600.00	600.00
Total Environmental Development Services	3,500.00	3,790.00	4,100.00	4,100.00
Recreational and Cultural Services				
Public Parks	1,000.00	986.12	1,000.00	1,000.00
Total Recreation and Cultural Services	1,000.00	986.12	1,000.00	1,000.00
Transfers				
Deferred Surplus				
Capital Fund				
Reserves	5,000.00	5,000.00	5,000.00	8,000.00
Total Transfers	5,000.00	5,000.00	5,000.00	8,000.00
Total Operating Expenditure	163,435.00	149,960.34	182,750.00	204,750.00

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PART: 3 – COUNCILS

Subject: 4 – Operation of Local Urban Districts

Page: 3.4.19

Date Issued: February 2003

New:

Amendment: √

Appendix 2 — Sample LUD Budget cont'd ...

REVENUE				
	Last Year Budgeted	Last Year Actual	This Year Budgeted	Next Year Budgeted
Unexpended – Prior Year's Levies	10,622.80	<i>Leave Blank</i>	19,297.35	0.00
LUD Revenues				
<u> GST</u>	0.00	595.00	600.00	600.00
<u> Conditional Grant (Student Program)</u>	0.00	4,880.00	5,900.00	5,900.00
<u> Scavenging</u>	0.00	615.49	1,200.00	1,200.00
	10,622.80	6,090.49	26,997.35	7,700.00
Amount required from Municipality – Page 5	151,512.20		154,652.65	195,950.00
Municipal Revenues Allocated to LUD				
<u> Business Tax</u>	1,300.00	1,032.20	1,100.00	1,100.00
	1,300.00	1,032.20	1,100.00	1,100.00
Tax Levy (Last Year Actual)		151,512.20		
Total Operating Revenue	163,435.00	158,634.89	182,750.00	204,750.00
Expenditure Under (Over) Revenue		8,674.55		
Net Required – to be raised by Taxation	151,512.20		154,652.65	
Assessment (Taxable and Grants)	18,938,600.00		19,116,260.00	
Mill Rate	8.0		8.10	
LUD		MUNICIPALITY		
_____ Chair		_____ Reeve		
_____		_____ Chief Administrative Officer		

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Subject: 5 – Compensation and Reimbursement of Expenses	
Page: 3.5.1	Date Issued: April 2022
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3.5 Compensation and Reimbursement of Expenses

(1) Definition

Subsection 124(1) of The Municipal Act (the Act) defines compensation and expenses related to council's remuneration for municipal business:

- Compensation is a fee, salary, wage or any other payment for services;
- Expense is a cost incurred by a council member while attending municipal business and includes vehicle expenses or mileage, travel expenses, meals, registration and tuition fees, out-of-pocket costs and any other expense provided for in the by-law passed under clause (2).

(2) Legal Requirements

The Municipal Act

Subsection 124(2) of the Act gives council the authority to pass a by-law setting the types, rates and conditions of payments for compensation or reimbursement of expenses to members of council and council committees.

Subsection 124(4) of the Act requires the annual financial statements of the municipality to detail the amount of compensation and expenses made to members of a council, council committee, or Local Urban District committee, including any person appointed to a council committee under clause 107(1)(b) or 107(1)(c).

Section 116 of the Act sets out the requirements respecting compensation and reimbursement of expenses to the committee of a Local Urban District and its members, including payments to the councillor appointed to the committee.

The Public Sector Compensation Disclosure Act

Subsection 2(1) of The Public Sector Compensation Disclosure Act requires the annual financial statements of the municipality to disclose the aggregate amount of compensation made to council and the compensation made to each member of council and municipal employees whose compensation is \$75,000 (indexed) or more. Subsection 3(1) also requires the municipality to publish the compensation disclosure on its website.

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Page: 3.5.2	Date Issued: April 2022
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(3) Establishing a Policy for Compensation and Reimbursement of Expenses

To enhance public transparency and accountability municipalities are encouraged to develop sound policies for compensation and reimbursement of expenses paid to members of council and council committees.

A municipality's policies should be fair and equitable given the time spent on municipal business, local costs and conditions.

In developing its policies, council may wish to consider:

- reasonable pay for the service performed, acceptable to the public
- the policies of other similar municipalities
- whether a special rate is warranted for the head of council, deputy head of council, committee chair, etc.
- the types of activities that constitute municipal business for which payments are made to or on behalf of members
- the potential difference in total payments of the various compensation options
- minimal paperwork to provide the necessary documentation of claims
- simple statements of claim that can easily be understood by everyone
- accountability controls to preserve the integrity of the policy (for example, the submission of receipts, a statutory declaration by the member, etc.)
- to suspend compensation when a council member is suspended under the municipality's council code of conduct by-law
- the requirement for prior authorization to accrue compensation

Municipalities should also consider one of the following options for methods of payment to compensate council or committee members:

- *Compensation by Fixed Amount*
 - monthly or yearly remuneration without regard for actual time spent or the nature of the activity.
 - simple to administer.
 - eliminates the need to monitor activities of members.

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PART: 3 – COUNCILS	
Subject: 5 – Compensation and Reimbursement of Expenses	
Page: 3.5.3	Date Issued: April 2022
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- *Compensation on Per Meeting Basis*
 - a fixed amount paid for each meeting attended.
 - requires the monitoring of activities of members.
 - requires definition of a qualifying meeting.
 - may require definition of minimum number of hours to qualify for a meeting.

 - *Compensation on Per-diem Basis*
 - fixed rates paid for each day or part day spent on municipal business.
 - requires monitoring of activities.
 - requires definition of activities that qualify as municipal business.

 - *Compensation by Fixed Amount, Per Meeting and Per-diem Basis*
 - combination of any or all of the above three methods. For example, council may establish a basic remuneration for regular meetings and establish an additional per meeting indemnity for special meetings or committee meetings, in recognition of the additional workload these meetings impose.
 - requires further development of how members will be compensated for specific activities.

Note: section 81(3) of the federal Income Tax Act was repealed, effective January 1, 2019. All non-accountable expense allowances provided to members of council are now taxable. Non-accountable expense allowance was an allowance for expenses paid to elected officials in the discharge of their duties over and above their salary and compensation.

Council may wish to reimburse members for specific expenses incurred by attending to municipal business. The expense policy:

- should set out rates that will be paid for certain expenses (for example, a meal rate, a mileage rate, a lodging rate).
- may require members to submit actual receipts for the expenses claimed.

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PART: 3 – COUNCILS	
Subject: 5 – Compensation and Reimbursement of Expenses	
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(4) Reporting Requirements

The Municipal Act

The following schedule is recommended to meet the reporting requirements of compensation and expenses under subsection 124(4) of *The Municipal Act*.

Annual reporting will be facilitated and public inquiries more easily responded to by reporting compensation and expense information on a monthly basis.

Amounts reported as compensation and expenses should be in accordance with the definitions for compensation and expenses under subsection 124(1).

The Public Sector Compensation Disclosure Act

In addition to the requirement under *The Municipal Act*, municipalities are required to report annually the total amount of compensation and reimbursement of expenses made to council and the compensation made to each member of council and municipal employee over a certain threshold.

Effective January 1, 2019, a \$75,000 threshold was established. The threshold amount is indexed to inflation and will be adjusted every five years.

Federal Income Tax Act

The reporting requirements are explained by Revenue Canada in their annual “Employer’s Guide to Payroll Deductions.” Preparers of T4 Supplementaries should familiarize themselves with these requirements on an annual basis. In general, income tax deductions and Canada Pension Plan contributions are applicable to all taxable amounts subject to exemption limits.

Municipal Act Procedures Manual

PART: 3 – COUNCILS**Subject: 5 – Compensation and Reimbursement of
Expenses**

Page: 3.5.5

Date Issued: April 2022

New:

Amendment: ✓

RECOMMENDED SCHEDULE FOR REPORTING OF COMPENSATION AND EXPENSES

(Name of Municipality)				
COMPENSATION AND EXPENSES For the month ending				
Name	Position	Compensation	Expenses	TOTAL
TOTAL				

This schedule reflects the information in the audited financial statement template - public sector compensation disclosure note.

Municipal Act Procedures Manual

PART: 3 – COUNCILS

Subject: 6 – Campaign Financing Municipal By-laws

Page: 3.6.1

Date Issued: January 2017

New:

Amendment: √

3.6 Campaign Financing – Municipal By-laws

(1) Legal Requirements

Campaign finance rules are in place for all municipalities, and apply to the election of council members. Rules also apply to all by-elections.

Sections 93.1 to 93.19 of *The Municipal Act* establishes municipal campaign finance requirements. Rules are in place for campaign contributions and expenses, and reporting by candidates running in municipal elections. These rules have implications for municipal councils, senior election officials (SEOs), chief administrative officers (CAOs) and candidates.

Information is available to assist SEOs, CAOs and candidates to know and understand the new campaign finance rules, including:

- Election Officials Manual
- CAO Campaign Financing Manual
- Candidates Guidebook

Information is also available on the Municipal Relations website at http://www.gov.mb.ca/ia/mfas/mfas_elections.html

This section of the Procedures Manual focuses on municipal councils' campaign financing requirements.

(2) Required and Optional By-laws

Municipal councils must establish specific campaign finance rules within their municipality, by by-law. There are four different by-laws – one required and three optional.

Required Campaign Expenses and Contributions By-law

Section 93.2 requires all municipalities to pass a Campaign Expenses and Contributions By-law to establish rules for:

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PART: 3 – COUNCILS	
Subject: 6 – Campaign Financing Municipal By-laws	
Page: 3.6.2	Date Issued: January 2017
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1. Setting a campaign expenses (spending) limit for candidates.
 2. Fund-raising.
 3. Recording and reporting campaign contributions and expenditures by candidates.
 4. Filing election finance statements by candidates.
 5. Form of the election finance statement.

The Campaign Expenses and Contributions By-law must be in effect by May 1st, the beginning of the campaign period for mayors/reeves in the year of the general municipal election. For the resort communities of Winnipeg Beach, Dunnottar and Victoria Beach, the by-law must be in place by February 1st of the year of the general municipal election.

Optional By-laws

Municipal councils also have discretionary authority to pass a by-law to:

- require election finance statements, required to be submitted by all registered candidates, to be audited – section 93.13
- implement a tax credit or rebate program for individuals who contribute to a candidate's campaign – section 93.17
- establish a program to reimburse candidates for a portion of their campaign expenses – section 93.18

These by-laws are discussed below.

(3) Campaign Expenses and Contributions By-law – Requirements

All municipalities must pass a Campaign Expenses and Contributions by-law that includes specific provisions. These are discussed below.

A sample Campaign Expenses and Contributions by-law is attached, as Appendix 1.1. Campaign Expense Limit – By-law Requirement

The purpose of expense limits is to create a level playing field for all candidates, ensuring fairness and equity.

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Amount of Limit

Municipalities must establish the maximum amount that candidates are permitted to spend on their campaigns. Councils have discretion over the amount established and the method to determine how the amount is calculated. Expense limits will therefore vary between municipalities, and will recognize local circumstances.

The maximum amount has to be both realistic and reasonable. If the limit is set too low, candidates might not have the ability to meet basic spending needs. If set too high, fairness and equity may not be achieved.

Some key considerations to take into account when establishing a campaign expense limit include:

- *Historical Trends* - Information on spending by candidates in past elections will be helpful when thinking about an expense limit. In setting the expense limit, information from previous elections – both anecdotal and records of previous candidates – could be considered. For future elections, information from candidates' election finance statements could be used. In municipalities where spending is historically minimal, a lower expense limit may be reasonable.

Councils may want to ensure that expense limits are not less than typical spending from previous elections.

- *Cost of Campaigns* - It is important for candidates to get their message out to voters. Spending limits should be high enough to enable candidates to undertake campaign activities, if they want to.

Some campaign activities have fixed costs, such as placing a newspaper advertisement or renting office space. The cost of other campaign activities vary on the basis of the number of voters, such as the number of pamphlets printed, signs made, or canvassing.

It is important that expense limits be updated from time to time, to keep up with increasing costs.

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PART: 3 – COUNCILS	
Subject: 6 – Campaign Financing Municipal By-laws	
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- *Contribution Limits* - Expense limits should not be lower than what a candidate can contribute to their own campaigns (\$1,500 for mayor/reeve or councillor elected at large; \$750 for councillor elected on a ward basis). This provides the opportunity to candidates to self-finance their campaigns.

Candidates must ensure that their actual campaign expenses do not exceed the amount of contributions they receive – deficits are not permitted.

- *Type of Campaigning* - The types of campaigns vary amongst municipalities. Spending limits would normally be higher in larger urban centres, where there are generally more candidates who actively campaign, more voters, and larger amounts of money spent on campaigns than in smaller urban and rural municipalities.

It is important to take into account the number of voters and the level of campaigning within the municipality.

- *Expense Limits in Other Municipalities* - Consider expense limits that have been set in other municipalities. For example:

In Winnipeg (2014 municipal election):

- councillor candidates - \$27,037 - \$45,965 (depends on number of voters)
- mayor candidates - \$203,257

In Ontario (2014 municipal election):

- Municipalities with 500 voters:
 - councillor candidates - \$5,425
 - mayor/reeve candidates - \$7,925
- Municipalities with 1,000 voters:
 - councillor candidates - \$5,850
 - mayor/reeve candidates - \$8,350
- Municipalities with 1,500 voters:
 - councillor candidates - \$6,275
 - mayor/reeve candidates - \$8,775

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Method of Establishing Expense Limit

There are different methods of establishing the expense limit:

- *Flat Dollar Amount – expense limits are the same for all candidates* - This approach would work best in a municipality where all candidates are running at large, and typically run similar types of campaigns (eg. signage, pamphlets). For those candidates, the cost of campaign activities does not vary much. All candidates are on a level playing field.
- *Dollar Amount Per Voter – expense limits vary amongst candidates* - This approach would work best in a municipality where candidates are running on a ward basis. For these candidates, the cost of campaign activities varies – some activities will cost more, depending on the number of voters in the constituency (eg. pamphlets, mailings). This is the approach used in the City of Winnipeg.

This approach also recognizes that candidates for mayor/reeve who run at large, have a larger electoral base, and potentially higher campaign expenses.

Municipalities using this approach must determine how to establish the number of voters; such as by using the voters list as it exists as of a certain date. It will be important to ensure that the voters list is as up to date as possible, to make it fair for all candidates. As a result, greater administrative effort will be required.

- *Combination of Flat Dollar Amount & Dollar Amount Per Voter* - This approach establishes a base amount of spending for all candidates, with additional amounts based on per voter.

This approach is currently used in Ontario. A \$5,000 base amount is established for councillor candidates and a \$7,500 base amount is established for mayor/reeve candidates, together with \$0.85 per voter.

2. Fund-raising – By-Law Requirement

Candidates may hold fund-raising events to raise money for their campaign. Section 93.2(b) of *The Municipal Act* provides that the Campaign Expenses and Contributions By-law must establish the portion of income from a fund-raising event that is deemed to be a contribution, and the portion that is deemed to be an expense.

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In the sample by-law (Appendix 1) and as illustrated in the example below, the net income realized at a fund-raising event is deemed to be the fund-raising contribution and the expenses incurred are excluded from the campaign expense limitation. This simple method of portioning fund-raising contributions and expenses is used by the City of Winnipeg and many municipalities in other jurisdictions.

Example:

Total fund-raising income:	\$10,000	(ticket sales, silent auctions, etc)
Total fund-raising expenses:	<u>(\$ 8,000)</u>	(expenses to host the fund-raising event)
Net Income:	<u>\$ 2,000</u>	

In the above example \$2,000 (net income) is considered the fund-raising contribution. The expenses are excluded from the campaign expense limit as these expenses are considered the cost of raising campaign contributions. Including fund-raising costs in the candidate's campaign expense limit would impact the amount that candidates are able to spend on other areas of their campaign.

[Note: including fund-raising expenses in the candidate's campaign expenses would increase the cost of a campaign expense rebate program if one is implemented by the municipality - Refer to Page 3.6.9, Reimbursement for Campaign Expenses.]

Contributions from an individual at a fund-raiser over and above the ticket price to attend the function are considered an individual contribution. It is recognized that it would be very difficult to track and record nominal contributions raised through general collections at fund-raising events (eg. pass the hat, arm's length tickets, etc.); however larger amounts should be tracked and recorded as personal contributions.

The sample by-law (Appendix 1) addresses this by establishing \$10.00 as the limit for any individual to contribute into a general collection at a fund-raising event. Contributions greater than \$10.00 must be considered an individual contribution. For example, if an individual purchases \$110.00 of arms length tickets at a fund-raising event, \$100.00 would be considered a contribution from the individual towards the candidate's campaign and \$10.00 would be included in the fund-raising revenue (net income from the fund-raiser).

It will be important to advise candidates that they need to keep a record of individual

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contributions into a general collection at a fund-raising event of more than \$10.00, so that this information is properly recorded in the election finance statement.

3. Recording and Reporting Campaign Contributions and Expenditures – By-law Requirement

The Campaign Expenses and Contributions By-law must establish how registered candidates keep records of contributions received (both monetary and non-monetary) and expenses.

The sample by-law (Appendix 1) provides that a candidate must keep records in a manner that facilitates the filing and reconciliation of the election finance statement. Examples of how candidates may keep records are included in the Candidates Guidebook.

Candidates are required to keep these records for at least 2 years after the election. Within that period, the records must be provided to the CAO on request.

4. Filing Election Finance Statements – By-law Requirement

The Campaign Expenses and Contributions By-law must establish the date that registered candidates must file their election finance statement with the CAO. The date must not be more than 210 days after election day, but it can be earlier.

Municipalities will likely want to give candidates maximum time to file their campaign statements. This will give candidates more time to raise any necessary additional contributions, to pay outstanding expenses and to make sure their statements contain all the required information. Candidates may file their statements earlier than the deadline.

In some instances, the CAO may require additional information from the candidate, for example if the statement is incomplete.

The Campaign Expenses and Contributions By-law must also establish the date (or number of days) within which candidates must file an additional statement, if requested by the CAO. The maximum number of days is 60, but could be less (eg. 30 days, in keeping with standard notice practices for most municipal and business matters).

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The sample by-law allows for 30 days for the CAO to contact the candidate and 30 days for the candidate to respond. This ensures that both parties have an adequate amount of time to review and address any shortcomings in the statement.

5. Form to be used for the election finance statement – By-law Requirement

All registered candidates must file an election finance statement with the CAO, within 210 days after the election (or by the date set in the by-law). The election finance statement is a key component of transparent municipal elections. Candidates are penalized if they do not file on time.

A sample Candidate Election Finance Statement is attached, as Appendix 2.

(4) Optional By-laws

Municipalities have discretionary authority to pass other campaign financing by-laws.

Audit of Election Finance Statement By-law

Municipalities have optional authority to require candidates' election finance statements to be audited. Legislation requires the audit to be done by an accountant under *The Chartered Professional Accountants Act*. The auditor must not be involved with the election as an election official or as a candidate.

If a municipality requires a candidate to file audited election finance statements, the by-law must be passed at least 180 days before the election. This ensures candidates have time to obtain an auditor and name the auditor on their registration form.

Candidates are responsible for the cost of any audit. The cost of the audit is not included in a candidate's campaign expense limit.

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Tax Credit/Rebate of Contributions & Reimbursement of Expenses By-laws

Municipalities have optional authority to establish new programs in the municipality. Municipalities interested in establishing these types of programs may wish to consult with their municipal solicitor, other municipalities, or jurisdictions that deliver these types of programs.

Tax Credit and Rebate for Contributors By-law

Municipalities may establish a program to provide contributors with either a tax credit or rebate for an amount equal to part of their contribution.

The by-law would specify the taxes against which there may be a credit and provide the amount, or means of determining the amount, of the credit or rebate of contribution. The by-law would also establish a maximum credit or a maximum rebate for contributors.

Reimbursement for Campaign Expenses By-law

Municipalities may also establish a program to reimburse candidates for a portion of their expenses.

The by-law must establish the campaign expenses that are eligible for reimbursement and provide the amount, or means of determining the amount, of the reimbursement of campaign expenses.

(5) Review of Municipal By-laws

It is important that council review their campaign finance by-laws to ensure that they continue to meet the needs of the municipality.

In particular, the expense limits set in the Campaign Expenses and Contributions By-law should be reviewed to ensure they continue to be relevant.

It is recommended that council review their by-laws at least once during their term of office (every four years), before each general election. Municipalities should also review the by-law prior to any by-elections.

Appendix 1 – Sample Campaign Expenses and Contributions By-law

<p>To be used by: All municipalities excluding Winnipeg Beach, Dunnottar and Victoria Beach</p>

(Name of Municipality)
By-law No.

WHEREAS under section 93.2 of *The Municipal Act* a municipality must pass a by-law prescribing certain matters concerning campaign expenses and contributions in connection with municipal elections.

NOW THEREFORE THE COUNCIL of _____ enacts as a by-law the following:

INTERPRETATION

- 1.1 Terms in this by-law have the meanings ascribed to them in *The Municipal Act*.
- 1.2 References to sections in this by-law are to provisions in *The Municipal Act*.

REGISTRATION OF PROSPECTIVE CANDIDATES

- 2.1 An individual applying to be a registered candidate under section 93.3 must complete the registration form provided by the Senior Election Official.

CAMPAIGN EXPENSE LIMIT

- 3.1 The limit to campaign expenses that may be incurred by registered candidates shall be
 - (a) for head of council, \$_____;
 - (b) for councillor, \$_____.

PORTIONING OF INCOME FROM FUND-RAISING EVENT

- 4.1 In this section, "fund-raising event" means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the event is held.
- 4.2 A fund-raising event held by or on behalf of a registered candidate shall be held only during the campaign period.
- 4.3 The total revenue received and the total costs incurred for a fund-raising event shall be recorded and included in Part B of the registered candidate's election finance statement.
- 4.4 The net income made at a fund-raising event shall be considered a contribution and expenses incurred in holding a fund-raising event shall be excluded from the campaign expense limitation. Net income is calculated by deducting fund-raising costs from fund-raising revenue.

- 4.5 Notwithstanding 4.4, a monetary contribution that is more than \$10.00 from an individual into a general collection at a fund-raising event must be considered a contribution as per section 93.2(b) of *The Municipal Act*, be recorded and reported in accordance with 93.12(1), and be excluded from the fund-raising event revenue.

ELECTION FINANCE STATEMENTS

- 5.1 The election finance statement shall be in the form set out in Schedule A to this by-law. Registered candidates must keep records of contributions received, campaign expenses incurred and loans obtained in a manner that facilitates the filing and reconciliation of the election finance statement.
- 5.2 Registered candidates must retain for not less than two years after the election, as per section 93.11(e), copies of receipts, bank statements, cheques and any other documents on which the election finance statement is based.
- 5.3 The date by which the election finance statement under section 93.12(1) must be filed is:
- (a) May 25, 2011 for the 2010 general election; and
 - (b) in each general election or by-election after that, 210 days after Election Day.
- 5.4 A request by the chief administrative officer (CAO) to file a further election finance statement under section 93.12(2) must be made within 30 days of the filing of the election finance statement.
- 5.5 The date by which a further election finance statement requested by the CAO section 93.12(2) must be filed is 30 days after the request is received.
- 5.9 After a registered candidate files his or her election finance statement with the CAO the statement shall be open to inspection by any person during regular office hours, and a copy shall be provided on payment of the municipality's current photocopy fee.

DONE AND PASSED, in Manitoba this ____ day of _____ 20__.

Reeve/Mayor

Chief Administrative Officer

Appendix 2 – Sample Election Finance Statement

**To be used by:
All municipalities excluding Winnipeg Beach, Dunnottar and Victoria Beach**

SCHEDULE A TO BY-LAW NO.

(Name of municipality)

CANDIDATE ELECTION FINANCE STATEMENT

To be filed with the Chief Administrative Officer 210 days after Election Day.

Name of office (Head of council or councillor, and Ward if applicable)		
Name of candidate		
Permanent mailing address		
		Postal Code
Phone	Phone (alternate)	Fax Number
E-mail address		

CONTRIBUTIONS IN CAMPAIGN PERIOD

Contributions \$250.00 or less	\$ _____	
Add: Contributions more than \$250 from single contributor	\$ _____	← From Part A
Add: Contributions from fund-raising events	\$ _____	← From Part B
Add: Other (Please specify)	\$ _____	
TOTAL CONTRIBUTIONS		\$ _____

Anonymous Contributions turned over to SEO	\$ _____
(Do not include in Total Contributions)	

EXPENSES IN CAMPAIGN PERIOD

Advertising – media, posters, pamphlets, signs	\$ _____	
Office–furniture, equipment, insurance, rent, telephone	\$ _____	
Office supplies – stationary, postage	\$ _____	
Candidate’s personal expenses	\$ _____	
Meetings, social functions, rallies	\$ _____	
Travel	\$ _____	
Other (please specify): _____	\$ _____	
_____	\$ _____	
TOTAL EXPENSES		\$ _____

SURPLUS/(DEFICIT)	\$ _____
(TOTAL CONTRIBUTIONS LESS TOTAL EXPENSES)	\$ _____

PART A

**CONTRIBUTIONS (INCLUDING GOODS OR SERVICES)
FROM A SINGLE CONTRIBUTOR VALUED MORE THAN \$250.00**

(Complete only if the total value of contributions, monetary and non-monetary, from any single contributor was more than \$250 during the campaign period).

Name	Address	Goods or Services	Amount/ Value of Goods or Services \$
PART A – TOTAL CONTRIBUTIONS			\$

PART B

FUND-RAISING EVENT STATEMENT

(Attach a separate statement for each event held)

Event #: _____

Date: _____

Held at: _____

Type of Function: _____

Revenue

(Please Specify e.g. ticket sales, merchandise etc.):

(Exclude individual monetary contributions into a general collection of more than \$10.00. These contributions are to be reported as individual contributions.)

TOTAL REVENUE \$ _____

Costs

(Please Specify e.g. hall rental, advertising, supplies etc.):

TOTAL COSTS \$ _____

**PART B – TOTAL
 CONTRIBUTIONS
 (TOTAL REVENUE LESS
 TOTAL COSTS)**

\$

LOAN DETAILS

Name of financial institution:	_____
Address:	_____ _____ _____
Amount borrowed:	\$ _____
Interest rate: _____ %	Terms for repayment _____

Sample

I, _____, a candidate for election as a member of council at the 20____ general election, declare:

- (a) this campaign finance completely and accurately discloses the information required by *The Municipal Act*; and
- (b) the requirements of *The Municipal Act* and the _____ By-law No. _____
(name of municipality)
have been met,

in relation to my election campaign in the 20____ General Election.

(SIGNATURE OF CANDIDATE)

Declared before me at the _____ in the Province of Manitoba,
this _____ day of _____, 20_____.

(SIGNATURE OF WITNESS)

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3.7 Code of Conduct for Council Members

(1) Legal Requirements

Individual council members have specific duties under *The Municipal Act*. These include a requirement to consider the well being of the municipality, to participate in developing and evaluating the policies and programs of the municipality, to participate in meetings and keep matters confidential until they are made public.

The public expects that council, and individual council members, will fulfill their duties responsibly, honestly, and with integrity. When this occurs, the public can be confident that council is acting in the best interests of the municipality.

Requirements for how individual council members meet public expectations are established in different pieces of legislation, including mainly *The Municipal Act* and *The Municipal Council Conflict of Interest Act*. As well, many municipalities have requirements for the conduct of council members in their Procedures By-law.

In addition, all municipalities are required to establish a code of conduct for council members (mayor/reeve and all councillors), under section 84.1 of *The Municipal Act*. At minimum, a resolution of Council is required to adopt the code. Council members have a duty to comply with the code.

Subsection 84.1(3) enables Council to censure (publicly reprimand) a member who breaches the code of conduct. To censure, approval of a majority of all council members, plus one, is required.

Codes of conduct for municipal employees are already a requirement under subsection 131(1) of *The Municipal Act*.

(2) Purpose of the Code of Conduct for Council Members

The purpose of the code of conduct for council members is to establish the standards and values that council members are expected to uphold in carrying out their duties under *The Municipal Act*.

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Codes of conduct are to provide clear guidelines on acceptable behaviour for council members in dealing with each other, employees and citizens. The code of conduct for council members is in addition to other rules that are already in place. Working together, the code and these other rules enhance public trust and help to ensure that decision making is fair and open.

(3) Developing the Code of Conduct for Council Members

Generally, codes of conduct contain standard provisions: preamble or “purpose” statements, definitions, principles and statements of appropriate and inappropriate behaviour. They also include specific rules about expectations for the conduct of council members.

The code must not include rules that are already contained in legislation or conflict with existing laws. The code is to be read in conjunction with, and not separate from, other legislation, by-laws and policies in place.

In Manitoba, *The Municipal Act*, *The Municipal Council Conflict of Interest Act*, and *The Freedom of Information and Protection of Privacy Act* have very specific rules for council members as well as penalties for non-compliance with those rules. The *Criminal Code of Canada* also governs the conduct of members of council. Given this, matters that fall under these Acts should not be included in your municipality’s code of conduct for council members.

Examples of matters that should not be included in a code of conduct are:

- Disclosure of confidential information – Requirements to keep matters confidential is already a duty of council members under *The Municipal Act*. Non-compliance could result in disqualification from office. For example, personnel and legal matters may be discussed in-camera and must remain confidential unless discussed at an open council meeting.

- Several matters under *The Municipal Council Conflict of Interest Act* -
 - Use information for personal gain or the gain of another, acquired in the performance of official duties
 - Compensation for services rendered by the council member
 - Use of influence for the municipality to enter into contracts, transactions, or to confer a benefit in which the council member or dependent has an interest
 - Acceptance of gifts

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Non-compliance with any of these provisions could result in disqualification from office or a requirement for financial restitution.

- Disclosure of personal information – Disclosure of personal information is already prohibited under *The Freedom of Information and Protection of Privacy Act*. Non-compliance could result in a member being fined.

When developing a code, it is always helpful to consider codes in other jurisdictions. However, it is important to keep in mind that the laws and policies in place in other jurisdictions may be different from those in Manitoba. Do not simply adopt a code from another jurisdiction without careful consideration.

A sample code of conduct for council members is attached, as Appendix 1 – Page 3.7.8.

(4) Council’s Decision to Censure

The decision to censure a member of council is a serious matter and should not be made lightly, given its public nature. To ensure that the process is fair and objective, the following process is recommended:

Step 1 – Alleging a Breach of the Code of Conduct

The council member who alleges that another member has breached the code of conduct must bring forward a resolution to censure at a council meeting that is open to the public.

The resolution must state the name of the council member to be censured, the section of the code that is alleged to have been breached and a brief description about the actions of the council member that have resulted in the alleged breach.

Sample resolutions are attached, as Appendix 2 – Page 3.7.12.

Step 2 – Consideration by Council

Once the resolution is introduced (moved and seconded) all council members, including the

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individual who is alleged to have breached the code, may take part in the debate on the resolution. The debate must take place in a council meeting that is open to the public.

It is critical that the member alleging a breach is able to provide reasons for why he/she believes a specific section of the code has been breached, including examples of the member's behaviour believed to be contrary to the code. Relevant information that is independent, objective and verifiable is required to ensure that council can make a well-informed decision. Such information could include written documents, citing dates and circumstances of specific instances, independent corroboration by other members, etc.

It would be inappropriate for a Council to censure a member on the basis of an unsubstantiated allegation.

In considering the resolution, it is also critical that the Chair provide an opportunity for all members to speak to the resolution, including the individual who is alleged to have breached the code. As a result, it is important for the discussion to take place at a meeting where the member of council who is alleged to have breached the code is present. The views of all members must be heard to ensure Council makes a fair, objective decision.

In determining whether a breach of the code has occurred and whether the member should be censured, Council should consider:

- **Reasonableness of the behaviour** – what were the specific circumstances that gave rise to the behaviour? Would other council members act similarly given the circumstances?
- **Attempt to mitigate** – did the member take steps to rectify the situation once it was pointed out that he/she could be in breach of the code? Did the member retract the statement that he/she made or make a formal apology?
- **Previous conduct** – is the behaviour of the member a single or first-time occurrence or has the behaviour occurred before? Has the member been reminded about the requirements in the code and his/her duty to comply with it?
- **Consistency** – is council treating all members fairly? If another council member acted the same way would he/she be censured?

It is always preferable to deal with the matter when the resolution is first introduced, so that

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Council can refocus its attention on municipal business. However, if all members of council are not present or if there is not sufficient time to deal with the matter at the meeting, the resolution could be tabled until a next meeting.

Step 3 - Vote by Council

Once a resolution to censure is introduced, a vote of council is required to resolve the matter. Based on its considerations, Council may decide to censure or may decide not to censure the member.

The resolution must be voted on at a council meeting open to the public and recorded in the council meeting minutes. The vote may be recorded if requested by a member of council. The process for a recorded vote established in the municipality's Procedures By-law must be followed if a member requests a recorded vote.

The member of council who is alleged to have breached the code is not eligible to vote on the resolution under common law.

Approval of resolution to censure requires a majority of the council members plus one (except the member proposed to be censured), under subsection 84.1(4) of *The Municipal Act*. All members of council (excepting the member of council who is alleged to have breached the code) must be present and vote.

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The following table illustrates the number of votes that are required to approve censure:

Council Size (Mayor/Reeve and councillors)	# of council members that may vote on resolution	# of votes in favor required to carry a resolution to censure (majority + 1)
5	4	4
6	5	4
7	6	5
8	7	5
9	8	6
10	9	6
11	10	7

Step 4 – Censure

To censure means to publicly reprimand a member. Censure does not enable Council to bar a member from meetings or suspend a member from council.

If Council approves a resolution to censure, no other action is required – the resolution is recorded in the meeting minutes and becomes part of the permanent public record.

(5) Reviewing the Code of Conduct

All council members need to be aware of the municipality's code of conduct. New council members should be provided a copy of the code of conduct at the first meeting following a general election or a by-election.

It is also important that Council regularly review its council members' code of conduct to ensure all members are familiar with the code, and to ensure that it continues to be appropriate and relevant for their municipality. It is recommended that council review the code annually.

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(6) The Code of Conduct is a Public Document

The council code of conduct is a public document that reaffirms the standards and values that council members are expected to uphold. Municipalities often post their council code of conduct on the municipality's website or in the municipal office to ensure that the public is aware of the code.

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APPENDIX 1 – Sample Council Members’ Code of Conduct

[NAME OF MUNICIPALITY]

COUNCIL MEMBERS’ CODE OF CONDUCT

PREAMBLE:

Public confidence and public trust are essential to good governance.

To promote public confidence and public trust, members of the Council of [municipality name] strive to govern in a fair, objective and transparent manner and in the best interests of the municipality at all times.

In carrying out their duties, it is essential that the conduct of members of the Council of [municipality name] reflect the standards and values of the municipality.

This Code of Conduct operates in addition to the existing legislation governing the conduct of council members, including *The Municipal Act*, *The Municipal Council Conflict of Interest Act*, and *The Freedom of Information and Protection of Personal Privacy Act*. The *Criminal Code of Canada* also governs the conduct of members of Council.

The Code of Conduct applies to all members of Council.

1. DEFINITIONS

Code means the Council Members’ Code of Conduct established and approved by council.

Council means the mayor/reeve and councillors.

Employees means any person employed by the municipality, and includes the chief administrative officer, designated officers, full-time, part-time, contract, or casual employees, including volunteers.

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Municipality means the [Name of Municipality].

2. PRINCIPLES

Members of the Council of [municipality name] have a duty to consider the well-being and interests of the municipality as a whole and to appropriately carry out the powers, duties and functions of the municipality.

In carrying out their duties, members of the Council of [municipality name] are expected to conduct themselves in such a way as to promote public trust and public confidence in the Council and the municipality.

3. PURPOSE

The purpose of this code is to establish clear conduct rules for members of Council, so that misconduct may be avoided, and so that clear standards exist against which to assess potential misconduct of those members.

4. RULES OF CONDUCT

4.1 Respectful Conduct

Every member of Council is expected to conduct himself or herself in public, and in respect to the public, in such a way as to reflect the decorum and dignity of the office that he or she holds.

No member of Council shall intimidate or threaten his or her colleagues, members of the public, or employees or volunteers of the municipality.

4.2 Respect for Decision-Making Processes

Every member of council is expected to respect the decision-making processes of the municipality.

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While members may hold different views on any given matter, once Council has made its decision, all members must uphold the decision.

4.3 Preferential Treatment

No member of Council shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based solely on the identity of the person or organization.

4.4 Respect for Role of Administration

Municipal employees are responsible for providing professional advice, are bound by the decisions of Council, and shall not be requested to take any action contrary to such decisions.

No member of council shall attempt to require a municipal employee to undertake personal or private work on behalf of the member.

4.5 Election Campaign Work

No member of Council shall use the facilities, equipment, supplies or services of the Municipality for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on municipal property unless permitted by the municipality (eg. an all candidates meeting).

No member shall attempt to require municipal staff to participate in political activities.

5. CONSEQUENCES OF MISCONDUCT

Every member of council who fails to meet his or her obligations under this code is subject to censure by council.

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6. REVIEW AND REVISION OF THE CODE

Council will review the code annually to ensure it continues to be appropriate and relevant for the municipality.

Council may, at its discretion and by resolution, amend the code.

Sample

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APPENDIX 2 – Sample Resolutions

Sample Resolution (1)

WHEREAS the Council Code of Conduct for Council Members applies to all council members and establishes the standards and values that council members are expected to meet in carrying out their responsibilities as elected officials of the municipality;

AND WHEREAS Section 4.1 of the Code of Conduct requires all council members to conduct himself or herself in public and in respect to the public in such a way as to reflect the decorum and dignity of the office that she or he holds;

AND WHEREAS [name of council member] made comments in a newspaper article on Saturday, September 29, 2012 about citizens residing in the Local Urban District of [name of LUD]

AND WHEREAS the comments made by [name of council member] do not reflect the standards and values of Council;

THEREFORE BE IT RESOLVED that [name of council member] is in breach of Section 4.1 of the Code of Conduct for Council Members;

AND FURTHER BE IT RESOLVED that Council censure [name of council member] for his/her breach of the Council Code of Conduct.

Municipal Act Procedures Manual

PART: 3 – COUNCILS

Subject: 7 – Code of Conduct for Council Members

Page: 3.7.13

Date Issued: October 2012

New:

Amendment: √

Sample Resolution (2)

WHEREAS the Council Code of Conduct for Council Members applies to all council members and establishes the standards and values that council members are expected to meet in carrying out their responsibilities as elected officials of the municipality;

AND WHEREAS Section 4.1 of the Code of Conduct requires all council members to conduct himself or herself in public and in respect to the public in such a way as to reflect the decorum and dignity of the office that she or he holds;

AND WHEREAS the conduct of [name of council member] towards other council members and members of the public at the council meeting that occurred on [date of meeting] does not reflect the standards and values of Council;

THEREFORE BE IT RESOLVED that [name of council member] is in breach of Section 4.1 of the Code of Conduct for Council Members;

AND FURTHER BE IT RESOLVED that Council censure [name of council member] for his/her breach of the Council Code of Conduct.

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND DESIGNATED OFFICER POSITIONS	
Subject: 1 – Considerations When Hiring a Chief Administrative Officer	
Page: 4.1.1	Date Issued: June 2008
New:	Amendment: ✓

4.1 Considerations When Hiring A Chief Administrative Officer (CAO)

(1) Role of CAO

The legislative duties of the CAO as established in *The Municipal Act* are outlined in Section (2) and (3) below.

In these times of change and limited resources, CAOs need more than excellent administrative skills. Building partnerships, finding new ways to do business, acting as a change agent and effectively communicating with stakeholders are taking on a great deal of importance. Non-traditional leaders, willing to take risks and accept challenges are needed to help communities move into the future. Their strength lies in the ability to motivate people to act in new ways, and adapt in the ever-changing political environment.

These emerging leaders may come from a range of backgrounds, including municipal organizations, other levels of government, not for profit agencies or private sector companies. Any manager who has had to exercise new levels of innovation, resourcefulness and risk to achieve positive results may be worthy of consideration as CAO of a Manitoba municipality.

Municipalities faced with the prospect of replacing their CAO will want to consider the specific skill set required to meet the challenges of the municipality and to think broadly about the avenues for recruitment. Advance preparation and a carefully considered process will provide council with a plan for hiring a CAO who will best fulfill the needs of the community.

(2) Legal Requirements

Subsection 125(1) requires every council to establish a position of chief administrative officer (CAO) by by-law, and to appoint, by resolution or by by-law, a person to the position.

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER

**Subject: 1 – Considerations When Hiring a
Chief Administrative Officer**

Page: 4.1.2

Date Issued: June 2008

New:

Amendment: ✓

Subsection 125(3) enables council to give the position any title considered appropriate, for example, CAO, municipal administrator, town manager, secretary-treasurer. The choice of title reflects local preference and makes no difference in terms of the duties, responsibilities or functions of the position.

A Sample By-law to establish the Position of CAO is attached as Appendix 1.

(3) Responsibilities and Duties of the CAO

Subsection 127(1) sets out the responsibilities of the CAO, including:

- acting as the administrative head of the municipality
- ensuring that the policies and programs of the municipality are implemented
- advising council on the affairs of the municipality
- managing and supervising employees, except as council may decide otherwise
- carrying out the powers, duties and functions assigned by council
- notifying the council if money of the municipality is used contrary to a by-law or resolution of the municipality, or any Act. Subsection 128(1) provides that if council does not rectify the matter within a reasonable time, the CAO has the duty to give the Minister written notice of the matter.

Subsection 127(2) sets out the administrative duties of the CAO:

- record all minutes of council meetings without note or comment
- safe-keeping of municipal records and documents
- collect the revenues of the municipality, and deposit monies on a regular basis
- pay the accounts for authorized expenditures
- keep accurate records and accounts of the financial affairs of the municipality
- provide information to the Minister as requested

The administrative duties of the CAO also apply to council committees, including local urban districts.

Section 85 provides that council may delegate by by-law some of its powers, duties or functions to the CAO, subject to express limitations.

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER

**Subject: 1 – Considerations When Hiring a
Chief Administrative Officer**

Page: 4.1.3

Date Issued: June 2008

New:

Amendment: ✓

(4) Role of the CAO and the Council

Role of Council

Council's fundamental role is that of policy maker. After consideration of a range of options and public input, it is up to council to make the final decision. Council must approve by-laws, adopt minutes and reports, approve tax rate and budget estimates, establish equitable compensation plans for staff, approve or reject capital projects, and set the goals and objectives that will provide overall direction to the community for the future.

The ability of council to make sound decisions will depend to a large extent on the strength of the CAO. The quality of information, analysis and recommendations provided to council are critical to council's central role. In that respect, the hiring of a CAO is one of the key responsibilities of any corporate leader – in this instance council.

Relationship of Council with the CAO

The quality of the relationship between the CAO and council is key to the effective and efficient conduct of business in the municipality. It is incumbent upon council to allow the CAO to manage. This assumes that council will channel requests for action, or reports from staff through the CAO. This will ensure that the CAO is kept fully aware of the concerns of both the public and the council.

Due to the very nature of the responsibilities of the CAO and council, there is potential for the two roles to overlap and perhaps conflict from time to time. As a result, it is essential that council and the CAO develop the necessary mechanisms to reduce areas of potential friction and thus ensure that conflict can be resolved quickly.

The council and the CAO should be meeting on a regular basis to discuss relationship issues and to ensure there are open lines of communication. Time should be set aside either before or after council meetings, or at other predetermined dates during the course of a council calendar to review the relationship, role and performance of the CAO.

The best mechanism available to council to minimize a bad relationship with the CAO is the hiring process. If council is able to select the right individual for the job, the chances of poor relations developing in the future are greatly reduced. Considerable emphasis should be placed on developing a step-by-step approach to the hiring of a CAO, rather than attempting to hire quickly and risk the potential for problems later on.

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER

**Subject: 1 – Considerations When Hiring a
Chief Administrative Officer**

Page: 4.1.4

Date Issued: June 2008

New:

Amendment: √

(5) Hiring a CAO

Many municipalities are facing, or soon will be facing the prospect of replacing their retiring CAO. The CAO of every municipality plays an important and key role, and for this reason, municipalities want to ensure that when they recruit they hire the best person possible. In this changing municipal environment, an effective CAO possesses a broad range of skills, such as leadership, communications, and problem solving, in addition to technical skills related to administration, finance and human resources.

Appendix 1 – Guide to Hiring Your Chief Administrative Officer was prepared in partnership with the Manitoba Municipal Administrators Association and distributed to all municipalities in 2006.

The Guide will help municipalities find that one right person for the job. It will also be a very useful tool to those municipalities not yet recruiting for a CAO. It offers practical advice and critical tips for municipalities in the process of developing, reviewing or updating their existing CAO position description. A current, relevant position description defines the responsibilities and duties of the CAO, as well as the results the CAO is expected to deliver.

A Guide to Hiring Your Chief Administrative Officer



Municipal Relations
Municipal Finance and Advisory Services
June 2006

A Guide to Hiring Your Chief Administrative Officer (CAO)

□ INTRODUCTION – HIRING YOUR CHIEF ADMINISTRATIVE OFFICER

- Taking Stock
 - Considerations when Hiring Your CAO
 - Embarking on a Recruitment Process
-

□ STEP 1 – DETERMINING THE RESPONSIBILITIES & REQUIREMENTS OF A CAO

- 1.1 - Developing a CAO Position Description
 - 1.2 - Sample CAO Position Descriptions
 - 1.3 - Core Skills
-

□ STEP 2 – RECRUITING FOR THE POSITION

- 2.1 - Targeting Potential Candidates
 - 2.2 - Developing a CAO Advertisement
 - 2.3 - Sample Advertisements
 - 2.4 - Advertising Options
-

□ STEP 3 - SCREENING APPLICANTS & CONDUCTING INTERVIEWS

- 3.1 - Screening Applicants
 - 3.2 - Developing Interview Questions
 - 3.3 - Sample Interview Questions
 - 3.4 - Structuring the Interview
 - 3.5 - Evaluating the Interview
 - 3.6 - Sample Evaluation Sheet
 - 3.7 - Second Interviews
 - 3.8 - Further Evaluating the Candidate
-

□ STEP 4 - CHECKING REFERENCES & MAKING A JOB OFFER

- 4.1 - Checking References
- 4.2 - Letter of Offer and Terms of Employment
- 4.3 - Sample Letter of Offer
- 4.4 - Sample Letter to Unsuccessful Candidate

INTRODUCTION – HIRING YOUR CHIEF ADMINISTRATIVE OFFICER

All municipalities, at one time or another, will be faced with the resignation or retirement of their Chief Administrative Officer (CAO). Given the key role the CAO has in the municipality, the process of replacing an experienced CAO – someone who has become extremely knowledgeable about your municipality over the years – can be daunting.

Replacing your CAO is a challenge, but the right person can help move your community into the future.

Councils should approach this challenge positively. Highly qualified people with the core skills required for a CAO do exist and can be found from many walks of life – all the municipality has to do is find that one right person. “A Guide to Hiring Your Chief Administrative Officer” offers practical advice on the process for hiring a new CAO.

Taking Stock

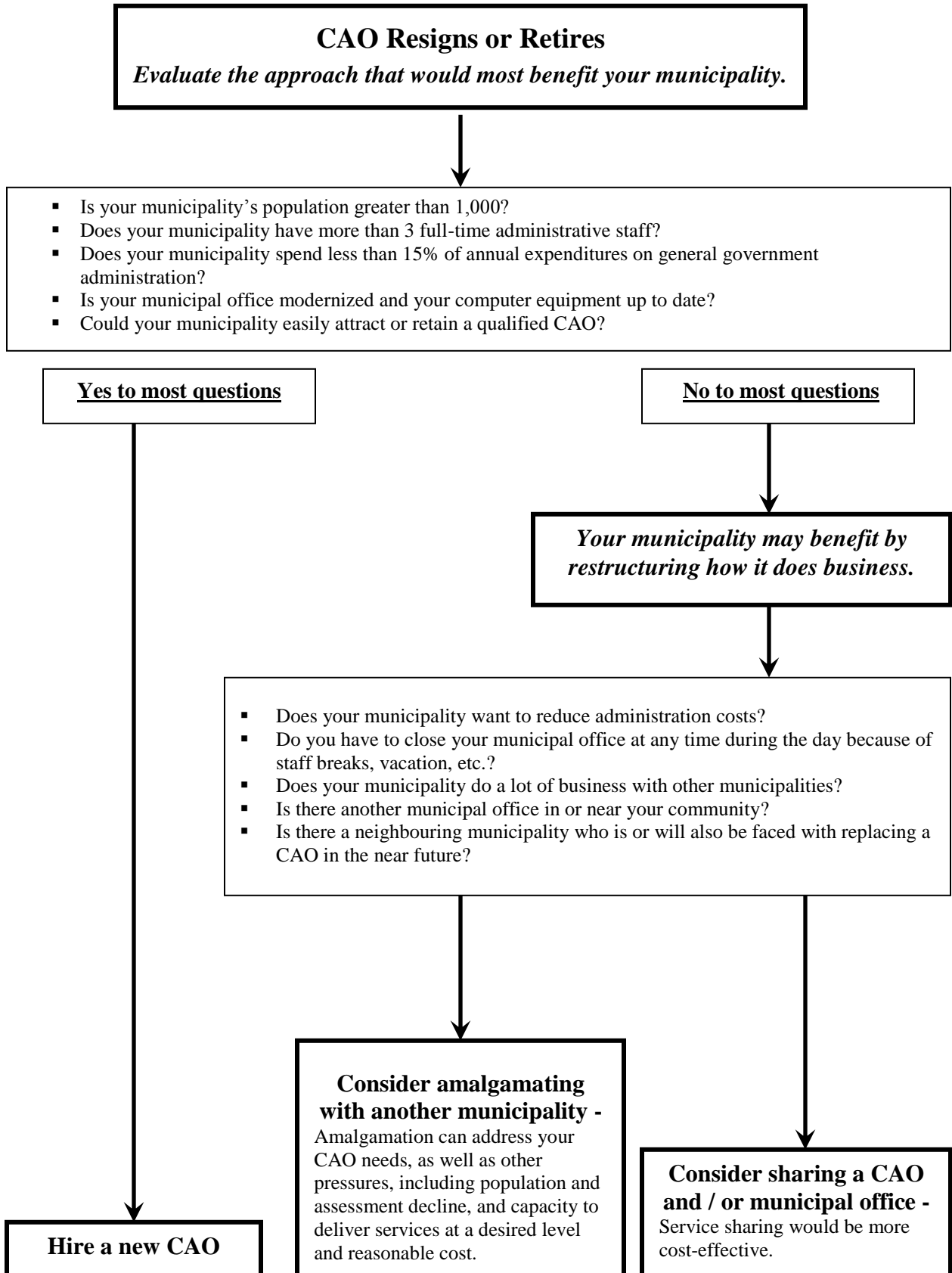
The resignation or retirement of your CAO presents a good opportunity to take stock of your municipality. Before embarking on the process of hiring a new CAO, councils need to step back and gauge the municipality’s strengths and understand its challenges. Where does council want the municipality to be in five or ten years, and what is council’s vision? How can the municipality be positioned for the future? What type of skills would a new CAO need to move the municipality forward? If council has not already done so, completing the Municipal Health Checklist in the Association of Manitoba Municipalities' Tools for Change program is a good first step.

For some municipalities, taking stock may require you to focus on new approaches for long-term sustainability.

Council may determine, based on the results of the Municipal Health Checklist, that it wants to explore options for restructuring. Restructuring can help municipalities capture future opportunities and ensure the long-term health of their municipality. Restructuring can take many forms, including changing the way services are delivered (for example sharing a CAO with another municipality) or even merging with another municipality.

The chart (Considerations when Hiring Your CAO) on the following page lays out critical questions council should be asking as it takes stock of the municipality and determines its next steps.

Considerations when Hiring Your CAO



Embarking on a Recruitment Process

Council's decision to hire a new CAO means development and implementation of a recruitment process to ensure that the best person possible for your municipality is hired to the position. The best person will have the qualifications council is looking for, but more importantly, will possess the necessary skills to take the municipality in the direction council has chosen for the future.

"A Guide to Hiring Your Chief Administrative Officer" outlines the critical steps that are necessary in the recruitment process. While municipalities will want to develop a recruitment process that is tailored for their particular circumstances, each of these critical steps should be undertaken:

Step 1 – Determining the Responsibilities and Requirements of a CAO –

Developing a position description that clearly defines the duties and responsibilities, together with the results the CAO will be expected to deliver, is the critical first step.

Step 2 – Recruiting for the Position –

Targeting potential candidates, developing an effective CAO job advertisement and evaluating options for advertising are keys to successful recruitment.

Step 3 – Screening Applicants and Conducting Interviews –

The screening and interview processes are critical steps in choosing the right person for the CAO job. This is the municipality's opportunity to evaluate whether prospective candidates possess the core and any additional skills required for the job.

Step 4 – Checking References and Making a Job Offer –

The reference check is the final critical step in the hiring process before making a job offer.

Remember – a strong and successful municipality relies on its CAO. A well-developed recruitment process ensures you hire a person who possesses the core skills your municipality needs now and into the future.

STEP 1 – DETERMINING THE RESPONSIBILITIES & REQUIREMENTS OF A CAO

1.1 - Developing a CAO Position Description

Developing a position description that clearly defines the duties and responsibilities of the CAO is the first step in a successful recruitment process. An effective job description clearly defines the responsibilities of the job, as well as the results the CAO will be expected to deliver, and should be relevant over time.

All CAOs are responsible for administration, financial management, and human resource management.

Core CAO Duties and Responsibilities:

The CAO has specific duties and responsibilities, which are outlined in *The Municipal Act*. The CAO will either directly perform these, or will delegate them to another staff member, depending on the municipality's size. Regardless of how these duties and responsibilities are carried out, the CAO always remains responsible under the Act. Core duties and responsibilities include administration, financial management and human resource management.

Administration:

The CAO is the administrative head of the municipality and is responsible for the overall administration of the municipality including:

- **Meetings of Council** – preparing and organizing all meeting and public hearing agendas; recording the minutes of all municipal regular meetings, special meetings and public hearings; and providing council with sound advice on all aspects of municipal governance and legislative requirements.
- **By-laws** – ensuring all required by-laws and resolutions are in-place and up-to-date; preparing resolutions and by-laws for the municipality, including the by-laws that require Ministerial or Public Utility Board approval (i.e. borrowing by-laws, local improvement and special service levy by-laws; public utility rate by-laws); ensuring the municipality's procedural and organizational by-laws are in place and up-to-date.

- **Implementing council priorities** – ensuring the policies, programs and services of the municipality are implemented; monitoring, evaluating and reporting back to council on the policies, programs and services of the municipality; and answering all public requests, inquiries and / or complaints, and ensuring a high standard of customer service.

Financial Management:

Sound financial management is critical to the successful operation of the municipality.

The duties of the CAO in this regard are far reaching, including:

- **Preparing the annual financial plan** – presenting options for the annual financial plan for council’s consideration, including the general operating budget, the capital budget, and the five-year capital expenditure plan.
- **Monitoring the financial plan** – preparing the monthly financial statements, an annual financial statement and cash flow projections as required.
- **Controlling** – the day-to-day accounting i.e. the accounts payable, accounts receivable, tax collections, payroll, monthly bank reconciliations and investments. This also includes ensuring that accurate records and books are kept of all of the financial affairs of the municipality, and making adjustments, as required, to the municipality’s financial plan.
- **Reporting** – providing council with up-to-date financial information on a regular and timely basis, ensuring that exceptions and issues are clearly identified, providing the Province with financial information and reports as required by legislation / agreements, working with the auditors when they are conducting the annual financial audit of the municipality and providing financial information to the public as required.
- **Taxation process** – administering the entire taxation process, including the annual Board of Revision hearing, collection of taxes and management of overdue accounts, and the sale of properties in arrears of taxes through the tax sale process.

Human Resource Management:

The CAO is responsible for the management and supervision of the employees of the municipality. Specific duties include:

- **Recruitment and development of employees** – including hiring, training, evaluating, promoting and dismissing employees.
- **Conducting union negotiations.**
- **Developing a human resource recruitment / retention plan.**

Additional CAO Duties:

The additional duties of the CAO will depend on the particular needs of your municipality based on its size, structure, vision and long-term plans. The CAO may have additional duties relating to:

- **Delivery of recreation programs and services.**
- **Economic Development.**
- **Project Implementation,** for example the implementation of a new public utility system; i.e. a rural water line project or gasification project.

Sample CAO position descriptions for small and large municipalities are provided.

1.2 - Sample A: CAO Position Description (Small Municipality)

Position Description – CHIEF ADMINISTRATIVE OFFICER

The Chief Administrative Officer (CAO) is the administrative head of the municipality. This position is responsible to council for the overall administration, financial management and human resource management of the municipality.

The CAO oversees the implementation and delivery of programs and services that are approved by council and ensures that these programs and services are delivered to all residents and ratepayers in a manner that makes efficient and effective use of the human, financial and physical resources of the municipality.

The CAO is the principal advisor to council and is responsible for ensuring that council is informed of their legislative responsibilities and authorities and all other relevant information necessary to make informed decisions on every municipal matter.

Responsibilities and Duties:

Administration:

- Prepare and organize the agendas for all municipal meetings and public hearings and ensure that agenda packages are provided to each member of council prior to each meeting or hearing in a timely manner in accordance with the time requirement established in the municipal Procedural By-law.
- Prepare the resolutions and by-laws for meetings of council and attend all regular, special, and committee meetings.
- Prepare, circulate and post the meeting minutes in a timely manner in accordance with the Procedural By-law, inform, and when necessary provide copies of all official correspondence, to all members of council.
- Ensure all required by-laws and resolutions are in-place and up-to-date and readily available for public review.
- Ensure all the records of the municipality are retained in accordance with the requirements of the legislation.
- Complete all documents, agreements, or contracts approved by council; prepare correspondence resulting from decisions of council, and delegate tasks as appropriate.
- **Policies/Programs/Service Delivery**
 - Monitor, evaluate and recommend changes to municipal policies and programs on an on-going basis, to ensure ongoing relevancy and effectiveness.

CAO Position Description (Small Municipality) (continued)

- Recommend to council new initiatives, changes to programs / services, or changes to the organizational structure that will improve efficiency or service delivery.
- Answer all public requests, inquiries and / or complaints, ensuring a high standard of service to ratepayers and citizens.
- Responsible for the overall administration of the municipality in accordance with plans, policies, programs, by-laws and regulations established by elected officials and by various provincial statutes.
- Develop and promote a strong working relationship with council, understanding and respecting the specific role distinction of council and management.

Financial Management:

- Prepare and present options for the annual financial plan for council's consideration, including the general operating budget, the capital budget and the five-year capital plan.
- Monitor the financial plan, including the preparation of monthly financial statements and annual financial statement and cash flow projections as required.
- Provide council with up-to-date financial information on a regular and timely basis; identifying any exceptions, and as necessary, options to manage exceptions.
- Ensure that accurate records and books are kept of all the financial affairs of the municipality, i.e. accounts payable, accounts receivable, tax collections, payroll, monthly bank reconciliations and investments.
- Ensure that all municipal expenditures receive necessary approval before payment is issued.
- Provide the Province with financial information and reports as required by legislation, agreements, or as requested.
- Hire and manage the municipality's auditors to ensure completion of the annual financial audit.
- Administer the municipal taxation process including the collection of taxes and management of overdue accounts, and the sale of properties in arrears of taxes and in accordance with the tax sale process established in *The Municipal Act*.

Human Resource Management:

- Responsible for managing all municipal employees, including the appointment, training, evaluation, promotion, transfer or dismissal of employees.

Sample B : CAO Position Description (Large Municipality)

Position Description – CHIEF ADMINISTRATIVE OFFICER

The Chief Administrative Officer (CAO) is the administrative head of the municipality. This position is responsible to council for the overall administration, financial management and human resource management of the municipality.

The CAO oversees the implementation and delivery of programs and services that are approved by council and ensures that these programs and services are delivered to all residents and ratepayers in a manner that makes efficient and effective use of the human, financial and physical resources of the municipality.

The CAO is the principal advisor to council and is responsible for ensuring that council is informed of their legislative responsibilities and authorities and all other relevant information necessary to make informed decisions on every municipal matter.

Responsibilities and Duties:

Administration:

- Attend all regular, special, and committee meetings of council, and lead the preparation of agendas.
- Prepare and present reports to council regarding municipal operations. Recommend appropriate action or request ratification for action taken to deal with matters requiring council approval.
- Ensure all required by-laws and resolutions are in-place and up-to-date and readily available for public review.
- Establish and maintain positive relationships with neighbouring municipalities, organizations, and other levels of government regarding municipal matters of interest.
- Demonstrate an in-depth knowledge of, and experience in government and business processes and decision-making, and legislative requirements and accountability principles related to government.
- Develop and promote a strong working relationship with council and respect the specific role distinction of council and management.

CAO Position Description (Large Municipality) (continued)

▪ Policies/Programs/Service Delivery:

- Advise council on strategy and policy with respect to land use planning and economic development for the municipality. Establish and maintain an effective working relationship with developers and businesses. Recommend municipal support and appropriate funding for proposed economic development initiatives.
- Respond to public enquiries and media requests for information or complaints with regard to municipal operations.
- Ensure that sound public relations are maintained by communicating information on the actions and decisions of council to ratepayers and citizens.

Financial Management:

- Direct the development of budgets and the establishment of financial controls. Work with employees to prepare and present options for the annual financial plan, the capital budget and the five-year capital plan.
- Ensure expenditures receive necessary approvals and are within the approved budget. Evaluate and recommend actions to be taken with respect to the municipality's financial position.
- Monitor the delivery of municipal services through the various department heads to ensure that council's budget (and business) plans are followed.
- Recommend to council new initiatives, changes to programs / services, or changes to the organizational structure that will improve efficiency or service delivery.
- Lead the development of a long-range plan for the operation and continued success of the municipality. Plan, direct and co-ordinate the day-to-day activities required to implement the plan.

Human Resource Management:

- Recruit, develop and evaluate all management employees. Approve the appointment, demotion, transfer or dismissal of employees, as well as all compensation administration, within established personnel policy and budget. Ensure the municipality has a comprehensive human resource plan to attract, develop and retain qualified employees.
- Develop appropriate communications procedures to ensure that all employees are informed regarding the policies and directions of council. Monitor the implementation and execution of all council policies by responsible departments.

1.3 – Core Skills

All CAOs must have specific core skills (also known as competencies) in order to perform their duties and responsibilities successfully. These competencies are attained through a combination of education; professional training and certification; and previous work experience.

All CAOs must have specific core skills to be able to perform their duties and responsibilities successfully.

Depending on what the municipality's specific needs are, some skills will be of greater interest than others – some municipalities may also seek additional skills not listed below. Core skills of a CAO include:

Technical Skills – knowledge of municipal administration, financial management and past experience working with municipal law. Depending on the municipality's needs, additional technical skills (e.g. knowledge of land-use planning), may be required.

Communication Skills – ability to express themselves clearly in conversations and interactions with others; express themselves clearly in business writing; and plan and deliver oral and written communications that make an impact and persuade their intended audience.

Analytical and Problem-Solving Skills – ability to tackle a problem by using a logical and systemic approach; anticipate the implications and consequences of situations and take appropriate action; and analyze the municipality's competitive position, including its strengths and weaknesses.

Leadership Skills – ability to work co-operatively with others to produce innovative solutions; take the lead in setting new partnerships, policies or procedures; delegate responsibility and coach other municipal employees to develop their capabilities.

Managing Change Skills – ability to demonstrate support for innovation and for organizational changes needed to improve the municipality's effectiveness; initiate, sponsor and implement organizational change; and help others to successfully manage organizational change.

Goal-Oriented Skills – ability to focus on the desired result of their work, and set challenging goals for other municipal employees. The CAO must seize positive opportunities that will benefit the municipality.

STEP 2 - RECRUITING FOR THE POSITION

2.1 - Targeting Potential Candidates

Potential candidates – those who possess the core competencies for the CAO position – can be recruited from several places. Most commonly, they will come from:

- **Within the municipality.** Always look within your own municipality to see if there is someone who would welcome and benefit from increased responsibility.
- **Other Municipalities or Local Authorities.** Qualified people may be recruited from regional health authorities, school divisions, planning districts, conservation districts, economic / regional development corporations, etc.
- **The Private Sector or Other Levels of Government.** Qualified individuals may include accounting and finance professionals, or public administration, business administration or other university or college graduates working in the public or private sector.
- **Other Provinces.** Be sure to target qualified individuals from other provinces as well.

Potential candidates may come from within the municipality; other municipalities or local authorities; or private sector or other levels of government.

2.2 - Developing a CAO Advertisement

An effective CAO advertisement highlights the qualities of the job that are most likely to appeal to the reader and will encourage an interested person to take the next step of applying for the position. The CAO advertisement is more than a simple classified advertisement – it has to attract attention in order to get a good response.

An effective advertisement will include the core skills that are required of the candidate, as well as all the pluses about the job and the municipality.

The CAO advertisement has to have enough selling power to convince qualified candidates to apply.

Ensure the following components are included in the CAO advertisement:

Job Title. The headline must be catchy and should make the reader interested to read further and apply for the position. For example:

Chief Administrative Officer – Leadership for a Strong Community

Position Description. The reader needs to know if the position is a good fit, just as council needs to know the person is a good fit for the municipality. Outline the duties and responsibilities, and excite the reader by talking about what they will be doing, rather than what experience is necessary. For example:

Chief Administrative Officer – Leadership for a Strong Community

Your impact on the municipality will be significant in several ways:

Administration: You will organize and attend all council meetings, ensure by-laws and resolutions are in place and up to date, recommend new initiatives to council and implement council priorities.

Financial management: You will prepare and monitor the annual financial plan, including the general operating budget, the capital budget and the five-year capital plan and administer the entire taxation process, including the collection of overdue accounts and the tax sale process.

Human Resource Management: You will recruit and develop all municipal employees.

Core Skills Required. To have the best candidate pool to choose from, do not list a large number of mandatory skills. There will be time to separate the ideal candidates (those with the core competencies) from the others later during the screening process. Advertisements are best when they are specific enough to keep the candidate wanting to know more about the position, but not so specific that people rule themselves out. Include any necessary educational requirements. For example:

Ideally, you will possess technical skills in municipal administration, financial management and human resource management. Strong communication, analytical, and leadership skills are just some of the requirements of the position. Desired candidates will have post-secondary education in a relevant discipline.

What the Municipality Offers. The advertisement should promote the municipality as a desirable place to live and work – never assume people know this. Instead, use your advertisement as a public relations vehicle to send the message that the municipality is progressive, professional and a terrific place to live and work. For example:

There will be opportunities to stretch your skills by contributing to the advancement of the municipality's economic development plan. Further professional development will be offered in order to ensure your success.

The Rural Municipality of _____ is a scenic farming community located in the _____ region of Manitoba, offering excellent recreational opportunities. It has a population of 2,000 residents and a \$1.5 million annual budget.

Salary. Mentioning salary is important to attracting candidates. It is thought that advertisements that make no mention of salary receive about half the response rate as advertisements that do. The municipality can also include a salary range. For example:

Salary starts at \$xx, xxx; the right candidate can expect a salary and benefits package that reflects their level of experience.

Encourage a Response. The response rate can be increased by how the applicants are asked to respond. Consider asking applicants to respond via regular mail or email. Be sure to list the municipal website as well, so applicants can learn more. For example:

Send a resume and cover letter to the Municipality of _____ at P.O. Box 456, or email municipality@_____.mb.ca.

For more information on the Municipality of _____ and a complete description of this exciting opportunity, visit us at www.municipality____.mb.ca

We thank all who apply and advise that only those selected for further consideration will be contacted.

Sample advertisements for both small and large municipalities are provided.

2.3 – Sample Advertisement (Small Municipality)

Chief Administrative Officer – Leadership for a Strong Community

Your impact on the municipality will be significant in several ways:

- Administration: You will organize and attend all council meetings, ensure by-laws and resolutions are in place and up to date, recommend new initiatives to council and implement council priorities.
- Financial management: You will prepare and monitor the annual financial plan, including the general operating budget, the capital budget and the five-year capital plan and administer the entire taxation process, including the collection of overdue accounts and the tax sale process.
- Human Resource Management: You will recruit and develop all municipal employees.

Ideally, you will possess technical skills in municipal administration, financial management and human resource management. Strong communication, analytical, and leadership skills are just some of the requirements of the position. Desired candidates will have post-secondary education in a relevant discipline.

There will be opportunities to stretch your skills by contributing to the advancement of the municipality's economic development plan. Further professional development will be offered in order to ensure your success.

The Rural Municipality of _____ is a scenic farming community located in the _____ region of Manitoba, offering excellent recreational opportunities. It has a population of 2,000 residents and a \$1.5 million annual budget.

Salary starts at \$xx, xxx; the right candidate can expect a salary and benefits package that reflects their level of experience.

Send a resume and cover letter to the Rural Municipality of _____ at P.O. Box 456, or email rmof__@_____.mb.ca.

For more information on the R.M. of _____ and a complete description of this exciting opportunity, visit us at www.rm____.mb.ca

We thank all who apply and advise that only those selected for further consideration will be contacted.

Sample Advertisement (Large Municipality)

Chief Administrative Officer – Core of the Municipal Team

Your impact on the municipality will be significant in several ways:

- Administration: You will lead the preparation and provide support for council meetings; ensure by-laws and resolutions are in place and up to date; advise council on land-use strategy and policy; recommend new initiatives to council; and oversee the implementation of council policies by responsible departments.
- Financial Management: You will direct the preparation of the annual financial plan, including the general operating budget, the capital budget and the five-year capital plan and will establish appropriate financial controls. You will oversee the entire taxation process, including the collection of overdue accounts and the tax sale process.
- Human Resource Management: You will recruit and develop all municipal management employees, and develop a plan to attract and retain employees.

Ideally, you will need technical skills in municipal administration, financial management and human resource management. Strong communication, analytical, and leadership skills are just some of the requirements of the position. Desired candidates will have post-secondary education in a relevant discipline.

There will be opportunities to stretch your skills by contributing to the development of a service sharing agreement with three neighbouring municipalities. Further professional development will be offered in order to ensure your success.

The Town of _____ is a bustling business centre located in the _____ region of Manitoba and offers a full service recreational complex, arena, golf course and arts centre. It has a population of 4,500 residents and a \$2.1 million annual budget.

Salary starts at \$xx, xxx; the right candidate can expect a salary and benefits package that reflects their level of experience.

Send a resume and cover letter to the Town of _____ at P.O. Box 123, or email townof__@_____.mb.ca.

For more information on the Town of _____ and a complete description of this exciting opportunity, visit us at www.town____.mb.ca

We thank all who apply and advise that only those selected for further consideration will be contacted.

2.4 – Advertising Options

How does council go about recruiting qualified candidates? There are a variety of options for advertising the CAO position. Advertising in a newspaper is a good place to start, but there are several advertising options which can significantly enhance the advertisement's reach and ensure you have the widest pool of qualified candidates to choose from. Consider the following ideas when deciding where to advertise:

Newspapers are only one place to advertise. A number of other options are available.

- **Newspapers.** Consider local and regional newspapers, as well as newspapers that have a broad, provincial reach, like *The Winnipeg Free Press* or *The Brandon Sun*. The advertisement will have to be shortened to fit the amount of space that is affordable. A good strategy when using a newspaper advertisement is to provide a link to a website, where a more detailed advertisement can be posted. At the end of the newspaper advertisement, simply note the website address where the detailed advertisement can be found.
- **Post the position throughout the municipality**, for example, in the local restaurant, hotel, recreation centre, library, or municipal office.
- Advertise on **your municipality's website**. Advertising the CAO job on the Internet is an excellent way to reach a large audience, allows the municipality to use all the space needed to sell the job, and costs nothing.
- Advertise on **other key websites**, including:
 - **The Association of Manitoba Municipalities (AMM)** – www.amm.mb.ca
 - **The Manitoba Municipal Administrators' Association (MMAA)** – www.mmaa.mb.ca
 - **Other provincial municipal associations** – the AMM has links to other websites at <http://www.amm.mb.ca/links.html>
- **Publications**, such as the AMM news bulletin, or MMAA notices.
- **Network** with people in other municipalities, the provincial government, or other organizations to find out whether they know of any qualified candidates. Word of mouth is a great way to attract candidates!
- Advertise with **job sites** (Internet job websites), like workopolis.com.
- Employ an **executive search company**. While this is typically a more costly option, such companies have expertise in recruiting at senior levels.

STEP 3 - SCREENING APPLICANTS & CONDUCTING INTERVIEWS

3.1 - Screening Applicants

When the CAO position advertisement deadline has passed, the next step is to screen the applicants. Although this step is time-consuming, it is extremely critical because it will help you determine your list of “must-talk-to” candidates and save you time and money because you will target the right people for an interview. Remember that hiring the wrong person is costly, as well as the recruitment process itself, and a well-planned and executed screening and interview process will help to reduce hiring mistakes and costs to municipalities.

Who Screens:

Municipalities have different practices regarding the responsibility for screening applicants and hiring decisions. In the majority of cases, municipalities have struck a personnel committee. A committee is generally preferable to an individual or all of council, since a committee is able to bring different, but complementary, perspectives to the table. Generally, the personnel committee comprises 2 or 3 members of council – it may also include the retiring CAO.

Most municipalities have a personnel committee that is responsible for screening applicants and hiring.

Organizing the Screening Process:

The selection of a CAO is all about prioritizing the applicants. Develop a checklist that lists out all the core skills needed for the job (e.g. technical skills in administration, financial management, and human resource management; communication skills; analytical skills; leadership skills, etc.) and any other additional skills. When reviewing resumes, it is important to highlight when the applicant’s skills, as

Prepare a checklist of the core skills needed for the job.

shown on their resume, match up with the core / additional skills needed for the job. Using the checklist process, the personnel committee should be able to distinguish the candidates they are interested in interviewing.

Sample Screening Checklist

<u>Core and Additional Skills</u>	Applicant # 1	Applicant # 2	Applicant # 3	Applicant # 4	Applicant # 5	Applicant # 6	Applicant # 7	Applicant # 8	Applicant # 9	Applicant # 10	Applicant # 11	Applicant # 12
Administration												
Financial Management												
Human Resource Management												
Communication												
Analytical / Problem-Solving												
Leadership												
Managing Change												
Goal-Oriented												
Additional Skills												
Additional Skills												

Limiting the Number of Candidates:

There is no hard and fast rule about the right number of candidates to interview – if the municipality needs a CAO, the personnel committee will need to interview as many candidates as necessary to find the right person. A general rule of thumb for interviewing is no more than 6 interviews in an 8 hour day. This ensures adequate time is given to each interview and provides the personnel committee with time to discuss and compare notes and observations.

A manageable number of candidates should be selected for interviews.

Using the screening process, a candidate who has the core skills listed on their resume (and adequate experience using these skills) should be considered for an interview. Generally the personnel committee will want to select a manageable number of candidates to interview based on the number of candidates that apply for the position.

3.2 – Developing Interview Questions

The job interview is what is relied on most heavily in making hiring decisions. Successful interview practices will help uncover a candidate's knowledge and capabilities as well as areas needing improvement – all of which are important when making critical hiring decisions.

Questions should be prepared well in advance and should be developed to reveal a candidate's technical skills, knowledge, behaviours, and key motivators. It is not enough to know whether a candidate can do the job. It is equally important to know whether the person will be a good fit for the municipality and whether the candidate will be motivated to do the job.

Good interviewers ask probing questions to determine if the candidate is absolutely the right choice and can do the job. Often, interviewers ask hypothetical questions of the candidate – however, these questions sometimes lead to answers that are not based on past performance, but on what the candidate thinks is the right answer. As well, try to avoid closed questions that call for one-word answers. Questions that begin with “tell me about,” or “describe a time,” and “give me an example” will provide much more information.

A well-prepared job interview will highlight a candidate's strengths and weaknesses.

Interview questions should have the candidate describe a situation, describe how they handled the situation, and describe why they handled it this way.

There are some questions that are not permitted to be asked at an interview. The Human Rights Code provides that questions of a personal nature (i.e. marital status, age, political beliefs) may not be asked in a job interview. When thinking about whether a question is appropriate, the personnel committee should first ask itself – does the question have anything to do with the job? For more information, contact the:

Manitoba Human Rights Commission

(<http://www.gov.mb.ca/hrc/>

or 1-888-884-8681).

3.3 - Sample Interview Questions

The following are sample interview questions that are based on the core skills required for a CAO.

Technical Skills

Administration

1. Please highlight those aspects of your background (education and experience) that you feel have prepared you for the position of CAO, and that make you the right candidate for the position.
2. Think of a time when you had many challenging projects with different priorities to manage. Tell us about it.
3. Please explain how you view the role of council versus the role of a CAO.
4. How would you deal with a situation where one or two council members were making specific demands, but council has not authorized you to take action concerning these demands?
5. There is increasingly greater public expectation that municipalities should be held publicly accountable. How would you respond to public demands for greater accountability? How would you deal with an angry member of the public who is upset with the municipality?

Technical Skills (continued)

Financial Management

1. A key responsibility of a CAO is developing the annual financial plan or budget to achieve council's tax, financial and service delivery objectives. Tell us how you would approach the budget development process if council has directed a reduction in residential taxation levels, maintenance of existing reserve levels for future plans and no decrease in service levels to the public. Specifically outline the process you would use, the information you would provide and some options you might examine to meet the objective.
2. Financial issues or problems often arise in a municipality because appropriate internal controls and monitoring mechanisms are not in place. Tell us about experiences you have had with the implementation of internal controls and financial monitoring, especially where these controls may not have been adequate.
3. Council is ultimately responsible to its ratepayers for the financial position of the municipality. Understanding financial information and making sound financial decisions can be difficult without financial training or background. However, it is the CAO's responsibility to ensure appropriate reporting is in place to facilitate sound decision making. Tell us, as a CAO, what financial information you would report on to council, how frequently you would report and how you would present the information in an understandable way so that council has the relevant facts to make sound financial decisions.

Human Resource Management

1. CAOs are often called upon to mediate disputes, which may arise within a municipality involving staff, councillors, or ratepayers and sometimes between two municipalities. Tell us about experiences that you have had mediating a dispute, your role, how you approached it and the outcome.
2. Have you ever been involved with introducing any new ideas or programs into your organization? Tell us about the program, and describe the steps you used to improve the acceptance for the program.
3. What is the most difficult management situation that you have had to handle in the past few years?
4. How would you describe yourself and your management style? How would you produce a working environment that supports maximum productivity? Please relate your response to your working experience.
5. How would you manage a person with a specific technical skill set that you do not possess (e.g. accounting, public works, etc.)? Please provide examples related to your work experience.

Communication Skills

1. Tell me about a time when you had to be assertive to get across a point that was important to you.
2. Describe a complex process, product, situation or rule that you had to explain to someone. How did you know you were successful in getting your point across?
3. Could you comment on your experience operating in a high public profile environment, dealing with the media, presenting and defending controversial issues?
4. Describe a report or proposal that you wrote that was very effective. How did you know? What was the outcome?
5. How do you keep staff aware of information and municipal activities that might affect them?

Analytical and Problem-Solving Skills

1. What kinds of problems do you deal with in your current job? How do you address them? Share some examples.
2. Tell me about a time that you came up with a solution to a problem that others had not been able to solve in quite a while.
3. What has been the most difficult management situation that you have had to handle in the past few years?
4. Tell me about a complex problem that you solved recently. How did you decide what to do? What were the key elements that you considered? What was the outcome?

Leadership Skills

1. Describe a recent initiative that you led. What obstacles did you face in reaching your goals? How did you overcome them?
2. How do you describe yourself and your management style? How would you produce an environment that supports maximum productivity? Please relate your response to your working experience.
3. Have you ever been in a leadership role where major change is taking place in the organization? How did you approach your part in it, and what are some of the key considerations in successfully introducing change?
4. Describe a group you led whose members did not work well together. What did you do to improve teamwork?
5. Share an experience in which you had to lead a technical team whose members had more expertise than you had. How did you deal with that?

Managing Change Skills

1. Describe a situation in which you anticipated the future and made changes to current services to meet future needs.
2. Give me an example of when you identified and assessed a new business opportunity.
3. Tell me about a time when you were surprised by a change at work. How did you deal with it?
4. Tell me about a time when you did not deal well with a change. What prevented you? What could you have done differently? What was the outcome?
5. Give me an example when you had to change a plan or approach that you were committed to. How did you feel, and how did you explain the change to your staff or the public?

Goal-Oriented Skills

1. Tell me about a recent goal that you set and achieved. Walk me through your thinking and planning process.
2. Give me an example of a goal that you did not reach. How did you feel about that? What could you have done differently?
3. Think of a job that you held where your goals were not clearly defined. What did you do about it?
4. How do you motivate your staff?

3.4 – Structuring the Interview

To ensure the interview time is used most efficiently, prepare for the interview in advance. The personnel committee should meet in advance to go over the questions and clarify how the interview will proceed. A recommended interview structure, to help keep the interview focused and on track in order to get the results needed to make a proper evaluation of each candidate, is provided below.

A well structured interview ensures that council gets the information needed from each candidate.

Introduction:

Build rapport. Always make the candidate comfortable and relaxed by using conversation openers and asking ice-breaker questions, such as “tell me about yourself.” Show a genuine interest and give each candidate your full attention by conducting the interview in a quiet, private space with the door closed. Ask others not to interrupt during the interview.

Provide background information. Give the candidate background information about the CAO position and the municipality.

Communicate expectations. Inform the candidate you will be asking questions first, that you will be taking notes, and that you will allow time at the end for their questions. Explain that you will be asking questions to get specific examples, and that in each case you want to hear about the situation, the actions the candidates took, and the end results. Tell the candidate if an actual situation does not come right to mind, you will allow them

time to think, or you will come back to the question. Ask the candidate if they have any questions before proceeding.

Interviewer's Questions / Candidate's Answers:

This is the part of the interview where you will gather the most information, so take good notes. As noted previously, ask questions that get the candidate to demonstrate their competency in the core skills needed for the job. Pace yourself according to the number of core skills you have identified, and ask about two or three questions for each core skill. **Your objective is to find evidence that a candidate has the core skills needed to do the job and any additional skills that the municipality believes are an asset for the position.** Make sure the candidate does most of the talking during this phase.

Candidate's Questions:

Leave enough time to answer the candidate's questions. Most candidates have prepared questions to show that they are very interested in the position.

Interview Close:

Sell the municipality. This is the time to sell the benefits of working for the municipality. It is important that you leave each candidate with a positive impression.

Communicate the next steps. Candidates want to know the next steps of the interview process and when they will hear from you. Let them know what to expect, and thank them for their time.

Interview Tips

The following provides some tips for common road-blocks that occur during an interview.

Keeping the candidate on track. The person asking the questions controls and directs the flow. If a candidate does not answer a question with the information council is seeking, re-phrase the question. For example, if the candidate is asked what personal qualities are necessary for success and answers, “you need at least 3 years of experience in financial management,” try putting the candidate back on track by being gently persistent: “Perhaps I didn’t make myself clear; I meant what personal qualities are necessary for success, not what kind of experience.”

The flustered candidate. What if a candidate is stumped on a question? The interviewers may be inclined to let them off the hook with, “that’s alright, let’s move on.” This is the wrong approach, because you still need an answer to the question. Try saying, “that’s alright, take your time to answer, I’m sure something will come.” If the candidate still draws a blank, move onto another question and return to the question when the candidate appears more relaxed.

The talkative candidate. The challenge with a talkative candidate is to guide the interview to gather information needed to make a hiring decision. You can handle a talkative candidate by either:

- Jump into the conversation with “You know, that’s very interesting. It makes me want to ask you about...” and then move onto the next topic.
- Start talking along with the candidate and redirect the conversation to a new area. Keep talking until the candidate stops, which should be in the first few seconds.

3.5 - Evaluating the Interview

During the interview, each member of the personnel committee should take notes of the candidate’s responses to the questions. Accurate and detailed notes on answers will enable them to more effectively evaluate the candidate’s responses. It is easy to think that interviewers will remember each response, but it is hard to do after a long day of interviewing.

The interview schedule can be set up in such a way as to provide space to take notes on the responses to each question. For example:

<p><u>Candidate # 1</u></p> <p>Question #1 – Managing Change Skills</p> <p>Describe a situation in which you anticipated the future and made changes to current services to meet future needs.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
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In order to rate candidates on each core skill, the personnel committee should use an evaluation sheet, which assigns the candidate a final score for each core skill. Based on the candidate’s answers to the interview questions, the personnel committee should be able to evaluate how well the candidate demonstrates expertise and proficiency in each core skill area. To make the best decision possible, all members of the personnel committee should evaluate the candidates separately and then review the findings as a group.

An evaluation sheet is helpful to identify which of the core skills are the candidate’s strongest.

It is important to have a consistent and reliable evaluation system. An evaluation sheet highlights a candidate’s expertise and proficiency in each core skill area, and helps to show which core skills are the candidate’s strongest.

The following is an example of an evaluation sheet. In this sample, the candidates are assigned a score on their ability to demonstrate that they have met the core skill requirements of the position.

3.6 – Sample Evaluation Sheet

EVALUATION SHEET

Candidate's Name: _____

Position: _____

Rate each core skill, and any additional skills on a scale from 1 to 4 by circling the rating.

1 = No evidence of desired skill (could not provide any specific examples)

2 = Limited evidence that candidate meets the desired skill (provided incomplete or vague examples)

3 = Evidence that candidate meets the desired skill (provided only one specific and complete example)

4 = Very strong evidence of desired skill (provided several specific and complete examples)

<u>Core skill name:</u>	<u>Rating</u>			
Administration - - - - -	1	2	3	4
Financial Management- - - - -	1	2	3	4
Human Resource Management- - - - -	1	2	3	4
Communication- - - - -	1	2	3	4
Analytical / Problem Solving- - - - -	1	2	3	4
Leadership- - - - -	1	2	3	4
Managing Change- - - - -	1	2	3	4
Goal Oriented- - - - -	1	2	3	4
Optional Desired Skills:				
- Economic Development- - - - -	1	2	3	4
- Project Implementation- - - - -	1	2	3	4
- Recreation Programs / Service Delivery- - - - -	1	2	3	4

3.7 - Second Interviews

The hiring process is more complex for senior positions. For this reason, the personnel committee may want to arrange a second or even third interview. A second interview will enable the personnel committee to continue to examine the candidate's ability and capability related to core skills, double-check items from the first interview and explore other areas of interest (for example, the candidate's motivational drive, ability to work with council, etc.) A second interview may also involve all members of council – the CAO will be working with all of council and everyone should have the opportunity to evaluate the candidates before a final decision is made.

Second interviews can be used to evaluate additional core skills, motivation and ability to work with council.

When candidates make it to the second round of interviews, they should be real contenders for the position. The end of the second round of interviews should give the personnel committee enough information to make a final decision; however, a third interview may be necessary.

3.8 – Further Evaluating the Candidate

Another evaluation tool is being increasingly used by potential employers to ensure the right candidate is hired. Psychological testing is used to evaluate attributes not easily determined through the interview process (e.g. ability to handle stress, ability to interact with people). While primarily used in the private sector, it is also used in the public sector. The usefulness and effectiveness are dependent on how the tool is administered and interpreted; requiring qualified professionals. Executive search firms typically offer this service.

Psychological testing is a tool available to assist municipalities in hiring the right candidate.

While there is a cost to using a tool such as psychological testing, organizations that have built this into their recruitment process recognize that hiring the wrong person has a greater cost.

STEP 4 –CHECKING REFERENCES & MAKING A JOB OFFER

4.1 - Checking References

The reference check is the final critical step in making sure the best candidate is hired to the CAO position. Candidates should be prepared to provide 3 references – at least 2 of these should be people they reported to at their present or previous job. References should be checked partly to verify what you have already discovered, partly to give you peace of mind, and partly to give you a greater understanding of how to get the best out of your chosen candidate once on board.

Be specific about the references you obtain – the best references are current or previous supervisors.

The following are some sample questions that can be asked when checking references. Not all will apply to the candidate you are asking about – your reference questions will have to be tailored to each individual's circumstances.

Sample Reference Questions

- What is your opinion of (candidate's) skills in terms of their ability to deliver _____ within their current position? (Repeat this question to cover all the relevant core skills required for the job.)
- What is your opinion of what motivated (candidate) within their current position?
- What is your opinion of (candidate) as a team player within the organization?
- What would you say was (candidate's) greatest strength?
- What would you say was (candidate's) biggest weakness?
- How would you say (candidate) took direction?
- What management problems, if any, did (candidate) cause you? (If necessary, follow up with – how did you resolve these issues?)
- What parts of the job did (candidate) have the most problems with?

- What was (candidate's) attitude toward developing needed new skills?
- How adept was (candidate) at developing new skills?
- How effectively did (candidate) achieve your organization's goals?
- How effective was (candidate) at communicating with the public? With co-workers? With other employees?
- How well did (candidate) deal with the public or handle sensitive issues with the public / media?
- What advice would you give me, as a potential employer of (candidate)?

4.2 - Letter of Offer and Terms of Employment

Once the recruitment process is complete and council has chosen the preferred candidate, making an offer is the final step. This is critical in the recruitment process and has to be properly thought out in advance and clearly communicated. Unsuccessful candidates also need to be informed.

An offer should be presented to the successful candidate in two ways: first verbally (by telephone or in person) and later in writing. After the verbal offer is accepted, a written letter of offer should follow. The letter will generally outline the conditions of employment including start date, starting salary, probationary period, nature and funding of fringe benefits, vacation period, expense policy, moving allowance, information on professional development, and information on the municipality's conflict of interest policy. The letter of offer should also include a place for the candidate to sign and formally accept the position. A signed copy of the letter of offer returned to the municipality is confirmation of acceptance of the position.

A letter of offer should be accompanied with relevant employment information for the new CAO.

Have your letter of offer reviewed by your municipal solicitor.

As the letter of offer will act like an employment contract, it is recommended that your municipal solicitor review it before it is sent to the candidate.

An alternative to a letter of offer is to appoint a CAO subject to the terms and conditions of a mutually acceptable contract. Those municipalities that offer employment contracts should include the contract with the letter of offer and advise the candidate that they may accept the contract by signing it and returning the original to the municipal office. An employment contract sets out the terms and conditions of employment, such as the length of the contract, the requirements of the position, the mechanism to adjust salary, the method for terminating the contract, etc.

Both the candidate and the personnel committee should have input into the employment contract.

Your municipal solicitor should be asked to review / approve the contract. A properly worded contract can limit any unforeseen consequences in the event of a premature dismissal or disputes about terms and conditions of employment. Both the candidate and the personnel committee will have had input into the employment contract and therefore the final document should reflect a common understanding of the commitments made.

For those municipalities that do not offer employment contracts, many have a personnel policy that outlines the specific conditions of employment. In this case, ensure the policy is up-to-date and include it with the letter of offer.

Ensure your personnel policy is up-to-date.

Samples of a letter of offer and a letter to the unsuccessful candidates are provided.

4.3 - Sample Letter of Offer

It is strongly advised that the CAO letter of offer or employment contract be reviewed by your municipal solicitor.

June 1, 2006

Name and Address

PRIVATE AND CONFIDENTIAL

Dear (Candidate):

Re: Chief Administrative Officer Position

I am pleased to confirm that you have been selected for the position of Chief Administrative Officer for the Municipality of _____. The position is offered on the following terms and conditions:

Your effective start date will be _____, 20____. Your starting salary as the Chief Administrative Officer will be \$xx, xxx per annum.

You will be on probation for you first twelve months (12) of employment with the Municipality of _____. The personnel committee will meet with you and conduct a performance review after you have completed six (6) months of employment, once again after twelve (12) months, after which time, the probationary period will expire or be extended. The personnel committee will meet with you annually thereafter.

Enclosed is a copy of the personnel policy, information about the municipal benefits plan and a copy of the municipality's conflict of interest policy. Please review each and call <name and contact information> if you have any questions in this regard.

To confirm acceptance of this offer, please sign and return a copy of this letter to the municipality within 5 working days.

I look forward to meeting with you on _____, 200_ at (time) at the municipal office to introduce you to the other staff members and to help familiarize you with your new workplace.

If you have any questions in the meantime, do not hesitate to call me.

Congratulations on your appointment. We are very pleased to have you join our team. Welcome aboard!

Yours truly,

Head of council

Enclosures

I accept the above offer of employment in accordance with the conditions specified above.

Signature

Date

4.4 - Sample Letter to Unsuccessful Candidate

June 1, 2006
Name and Address

PRIVATE AND CONFIDENTIAL

Dear (Candidate):

Re: Chief Administrative Officer Position

Thank you for your interest in the Chief Administrative Officer position for the Municipality of _____.

We very much appreciated speaking with you and discussing your interest in the position.

In considering all the candidates, the Municipality of _____ was of the opinion that the qualifications of another candidate were more closely suited to the requirements of the position.

Thank you again.

Yours truly,

Head of personnel committee

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND DESIGNATED OFFICER POSITIONS	
Subject: 2 – Designated Officer Positions	
Page: 4.2.1	Date Issued: January 2017
New:	Amendment: √

4.2 Designated Officer Positions

(1) Legal Requirements:

Section 130 of *The Municipal Act* provides that council may, by by-law, establish one or more designated officer positions to carry out the powers, duties and functions of a designated officer under the authority of a municipal by-law or provincial legislation.

(2) Designated Officers:

The Municipal Act provides that certain duties must be performed by designated officers, and the positions responsible for these duties must be established, by by-law, as designated officer positions. Duties that must be performed by a designated officer include:

- signing council meeting minutes (Section 133)
- signing agreements, cheques and other negotiable instruments (Subsection 134(1))
- signing by-laws (Subsection 145)
- issuing tax certificates (Subsection 341(1))
- performing municipal inspections (Subsection 239(1))
- applying to the court for orders to enter property and inspect and test water meters (Subsection 241(1))
- issuing written orders to remedy by-law contraventions (Section 242)
- issuing written orders to remedy dangers and unsightly property (Subsection 243(1))
- obtaining possession of property prior to tax sale (Subsection 368(2))
- bidding on or purchasing properties at the tax sale on behalf of the municipality (Section 374)

A council may also, by by-law, delegate to a designated officer, an employee or a committee of council, any other powers, duties or functions except its power to pass resolutions and by-laws, hold public hearings, decide appeals or revoke the appointment of a Chief Administrative Officer (CAO) (Subsection 85(1)). For example, council may delegate to the public works supervisor the duty to interview candidates and/or conduct performance appraisals for all public works employee positions; delegate to the assistant CAO the responsibility to attend library board meetings, etc.

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND DESIGNATED OFFICER POSITIONS	
Subject: 2 – Designated Officer Positions	
Page: 4.2.2	Date Issued: June 2009
New: <input checked="" type="checkbox"/>	Amendment:

A designated officer may, in turn, delegate any of their duties or functions to an employee of the municipality (Section 131) unless the by-law or legislation prohibits the delegation. For example, the by-law delegating the responsibility to conduct performance appraisals of public works employees to the public works supervisor may also prohibit him/her from delegating that responsibility to another employee.

(3) Establishing Designated Officer Positions:

Designated officer positions must be established by by-law. A sample by-law, included as Appendix 1, establishes all of the designated officer positions for the municipality. Alternatively, council may establish a designated officer position and the duties of that designated officer in separate by-laws, i.e. the by-law establishing the CAO position, the building by-law establishing the building inspector position, the animal control by-law establishing the animal control officer position, etc. The by-law must state that the position is established as a designated officer position in accordance with Section 130 of *The Municipal Act*.

(4) Appointing Designated Officers:

Council may appoint a person to a designated officer position by resolution rather than include the appointment in the by-law establishing the position (see attached sample by-law). This enables council to appoint a person to the position, whenever necessary, without amending or repealing the by-law.

A designated officer must be a person and not a company or corporation. *The Municipal Act* defines ‘designated officer’ as a **person** appointed to the position established under the authority of Section 130. For this reason, should a municipality wish to employ the services of a company to fulfil the duties of a designated officer, council must appoint a person that works for that company as the designated officer.

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND DESIGNATED OFFICER POSITIONS

Subject: 2 – Designated Officer Positions

Page: 4.2.3

Date Issued: June 2009

New: ✓

Amendment:

APPENDIX 1 – Sample Designated Officer Appointment By-law

RURAL MUNICIPALITY of SOMEWHERE

By-law Number _____

BEING a by-law of the Rural Municipality of Somewhere
Authorizing the establishment of designated officer positions

WHEREAS Section 130 of *The Municipal Act*, L.M. 1996, c.58 states as follows:

Establishment of Designated Officer Positions

130 A council may, by by-law, establish one or more positions to carry out the powers, duties and functions of a designated officer under a by-law of this or any other Act, and may give each such positions any title the council considers appropriate.

NOW THEREFORE the Council of the Rural Municipality of Somewhere in open session assembled enacts as follows:

1. THAT the positions of “Chief Administrative Officer”, Assistant Chief Administrative Officer”, “Public Works Supervisor”, “By-Law Enforcement Officer”, “Building Inspector” and “Development Officer” be established as designated officer positions of the Rural Municipality of Somewhere.
2. THAT the appointment of the persons to the designated officer positions shall be authorized by resolution of Council.

That this by-law shall become effective upon receiving third reading.

DONE AND PASSED in Council assembled at the _____ in _____,
the Province of Manitoba, this _____ day of _____ A.D. 20____.

Head of Council

Read a first time this _____ day of _____, A.D. 20____.

Read a second time this _____ day of _____, A.D. 20____.

Read a third time this _____ day of _____, A.D. 20____.

Chief Administrative Officer

Municipal Act Procedures Manual

PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND DESIGNATED OFFICER POSITIONS	
Subject 3 – Municipal Employee Code of Conduct	
Page: 4.3.1	Date Issued: December 2009
New: ✓	Amendment:

4.3 Municipal Employee Code of Conduct

(1) Legal Requirements

Citizens expect municipal governments to be fair, open, and transparent. This expectation applies to the actions and decisions of both elected officials and municipal employees.

As employers, councils expect municipal employees to perform their duties at a standard that enhances public confidence and trust in the integrity, objectivity and impartiality of the municipality.

Establishing a comprehensive Code of Conduct is a way to set expected standards of behaviour for municipal employees, and is a mandatory requirement for all municipalities. Codes of conduct are a practice in most organizations in both the public and private sector.

Subsection 131(1) of *The Municipal Act* requires all municipalities to establish a Code of Conduct for employees of the municipality that includes conflict of interest rules.

Subsection 131(2) of *The Municipal Act* requires that specific conflict of interest rules must be included. It also must include procedures for employees to follow if the employee suspects that they have a conflict of interest, and the procedure for resolving a conflict.

A resolution of council is required to adopt the Code of Conduct.

(2) Application of the Employee Code of Conduct

The municipal employee Code of Conduct applies to all employees of the municipality. This includes the chief administrative officer (CAO), designated officers, full time, part time, contract, or casual employees. Volunteers (eg. firefighters) are also included, as they are considered to be employees under employment standards legislation.

Municipal Act Procedures Manual

**PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND
DESIGNATED OFFICER POSITIONS**

Subject 3 – Municipal Employee Code of Conduct

Page: 4.3.2

Date Issued: January 2017

New:

Amendment: √

(3) Content of the Employee Code of Conduct

A Code of Conduct establishes standards of behavior for employees in carrying out their duties and functions. While Codes may vary, they also share many common elements. When considering what to include in the municipality’s Code of Conduct, look at Codes that are in place in other municipalities in Manitoba and in other provinces.

The Manitoba Ombudsman guide, “Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders”, is also a helpful resource. The guide was distributed by the Ombudsman to all municipal offices, and is also available electronically, at: <https://www.ombudsman.mb.ca/>

A sample municipal employee Code of Conduct is attached, as Appendix 1. In developing this sample, consideration has been given to provisions under *The Municipal Council Conflict of Interest Act*, which applies to council members.

Required Elements – Conflict of Interest

Conflict of interest, both real and perceived, is harmful to public confidence in the municipality. As such, all municipalities’ employee Codes of Conduct are required to set out minimum standards for employees to address potential conflict of interest situations.

Prohibited Conduct by Employees

Subclause 131(2)(a) of *The Municipal Act* requires that the Code of Conduct must set out types of employee conduct that are prohibited:

- *Information gained as a result of the employees employment to further their own interests or the interests of their dependants, or the interests of any other person – employees may not use confidential or “insider” information concerning the affairs of the municipality (eg. passing on information obtained through internal discussions about the value of piece of municipal property to be sold) for their personal benefit, or the benefit of any other person.*

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Page: 4.3.3	Date Issued: December 2009
New: <input checked="" type="checkbox"/>	Amendment:

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- *Use of their position to influence a decision, to further their own interests or the interests of their dependants, or the interests of any other person* – employees may not use their position to influence a specific decision (eg. recommending their spouse’s company be hired to do work for the municipality; accepting gifts from any person as an inducement to make or encourage a decision).

NOTE: “Dependant” is not defined in the legislation but is normally someone who resides with the employee and is financially dependant on the employee, such as a spouse, partner, and a child. This is consistent with the definition of “dependant” under *The Municipal Council Conflict of Interest Act*.

These specific conflict of interest rules are a minimum requirement under *The Municipal Act*, and are standard provisions in most comprehensive municipal Codes of Conduct. Municipalities’ employee Codes of Conduct may also address other conflict of interest matters.

Procedures for Suspected Conflict of Interest

Subclause 131.1(2)(b) of *The Municipal Act* requires the Code of Conduct to specify procedures employees are to follow if they suspect that they have a conflict of interest, and the procedure for resolving a conflict. Through these procedures, citizens can be assured that decision-making is fair, open and transparent.

Procedures may include requirements for:

- Disclosure of a conflict of interest by the employee. Employees may be required to disclose the nature of the conflict or potential conflict (eg. spouse’s company is on the shortlist of companies being considered for work in the municipality) in writing to the employee’s immediate supervisor. A disclosure by the CAO could be to council or, where established, the Personnel Committee.
- A review by the employee’s supervisor within a specified period to determine if a conflict of interest exists, depending on the circumstances.
- Withdrawal by the employee from participation (discussion, evaluation, recommendation) on the matter where the conflict or potential conflict exists.

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New: ✓	Amendment:

- Action to be taken by the municipality if an employee fails to disclose a conflict or potential conflict. This could include disciplinary proceedings, etc. In addition, consideration must be given to any collective bargaining agreements in place.

Additional Elements

Introductory Provisions

Comprehensive municipal Codes of Conduct should include introductory provisions that establish its purpose, scope and application:

- *Principles* – to state, at a high level, the expectation that employees will maintain a high standard of conduct in the performance of their duties and responsibilities, regardless of personal consideration, and will act in the public interest.
- *Preamble* – to state that the Code operates in addition to other municipal policies determined by council. The preamble may reference collective bargaining agreements and their application.
- *Definitions* – to ensure key words used in the Code such as “dependant” or “employee”, are consistently understood by employees, council and the public.
- *Scope of the Code* – to clearly set out who the Code applies to.

Additional Provisions

Comprehensive municipal employee Codes of Conduct should also include additional provisions that address specific circumstances that may arise in municipalities. Common provisions found in municipal employee Codes of Conduct address:

- *Confidentiality* – to ensure employees are aware of an obligation to keep matters confidential, until the information is available to the general public.

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- *Use of Municipal Property and Assets* – to establish rules for if and when a municipal employee may use municipal property or assets (eg. snowplow, municipal credit card, computers and internet etc.) for personal use.
 - *Involvement in Community and Political Activities* – to establish rules for when employees are engaged in community and political activities.
 - *Family and Personal Relationships (nepotism)* – to ensure all hiring, promotions, performance appraisals and discipline are undertaken in a fair and objective manner and not influenced by a family or other personal relationship.
 - *Outside Work or Business Activities* – to establish rules for employees who engage in outside employment or business, to ensure such activities do not conflict with the best interests of the municipality or the employee’s ability to perform their municipal duties.

(4) Communicating the Code of Conduct

The CAO, as administrative head of the municipality, must ensure that all employees are aware of and comply with the employee Code of Conduct. Municipalities may wish to:

- distribute and review the Code with all employees.
- include the Code in the municipality’s employee manual.
- incorporate a review of the Code into employees’ annual performance appraisals.
- post the Code on the municipality’s website.

(5) Review of the Code of Conduct

It is important that council regularly review its municipal employee Code of Conduct, to ensure that it continues to be appropriate. It is recommended that council review the Code of Conduct at least once during their term of office (every four years). However, council may review the Code more frequently, at its discretion.

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New: <input checked="" type="checkbox"/>	Amendment:

APPENDIX 1 - Sample Municipal Employee Code of Conduct

[NAME OF MUNICIPALITY]
MUNICIPAL EMPLOYEE CODE OF CONDUCT

PRINCIPLES:

The [municipality name] strives to maintain a high level of public trust and confidence in the integrity, objectivity and impartiality of the municipality.

As our most valuable and significant resource, our employees are expected to maintain high standards of personal and professional conduct, demonstrate integrity and impartiality at all times, and perform their duties and responsibilities in a manner that recognizes a commitment to the well-being of the community.

PREAMBLE:

This Code of Conduct operates in addition to other policies, regulations and administrative directives for employees, as may be determined from time to time by council or the chief administrative officer.

Where any provision of this Code is inconsistent with a collective agreement or employment contract that applies to that employee, the provision of the collective agreement or employment contract applies.

DEFINITIONS:

Assets include, but are not limited to, municipal buildings and land, equipment, supplies, vehicles, materials, electronic networks, and financial assets.

Chief Administrative Officer (CAO) means the Chief Administrative Officer of the municipality, and includes his or her designate.

Code means the Municipal Employee Code of Conduct established and approved by council.

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New: √	Amendment:

Confidential information means information that is not part of the public domain and information designated by council as confidential, such as personal information, internal policies, items under any legal proceeding, etc.

Dependant means the spouse or common-law partner of an employee, and any child, natural or adopted, residing with the employee, and has the same meaning as in *The Municipal Council Conflict of Interest Act*.

Employee means any person employed by the municipality, and includes the CAO, designated officers, full time, part time, contract, or casual employees, including volunteers.

Municipality means the [Name of Municipality]

SCOPE:

This code applies to all employees of the municipality.

USE OF CONFIDENTIAL INFORMATION:

Employees may have access to confidential information during the course of their duties and responsibilities.

Employees are expected to keep information confidential, until the information is available to the general public.

Employees must not use confidential information concerning the affairs of the municipality to advance their personal interests, their dependants' interests, or the interests of any other person.

USE OF INFLUENCE:

The municipality strives to ensure fairness and objectivity in its decision-making process. Employees must not use their positions to give anyone preferential treatment that would advance their own interests, or that of any member of the employee's family, friends or business associates.

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New: <input checked="" type="checkbox"/>	Amendment:

Employees who have a financial interest in a municipal contract, sale or other transaction, or knowingly have family members, friends (individual with whom the employee has a close personal relationship) or business associates with such interests, must not participate in any discussion, evaluation or recommendation with respect to the matter.

ACCEPTANCE OF GIFTS:

Citizens' perception of the integrity of the municipality and its employees is important. Employees must avoid real or perceived appearances of impropriety with organizations or businesses that do business with the municipality.

Employees must not accept gifts, favours or other benefits (eg. hospitality or entertainment) that are connected directly with the performance of their duties or responsibilities, from any person who is directly or indirectly involved in any business relationship with the municipality.

Gifts, favours or benefits that are part of a normal exchange between persons doing business or part of a public function are permitted.

USE OF MUNICIPAL PROPERTY AND ASSETS:

Municipal property and assets belong to the community as a whole and must only be used by an employee to perform work related duties and responsibilities, or for community activities that are authorized by council.

Personal use of municipal property and assets by an employee are permitted only if authorized by council. Generally, personal use of municipal property and assets will only be permitted if they are also available to be used by the public.

Municipal property and assets in the care of an employee must be protected and kept secure at all times.

POLITICAL AND COMMUNITY ACTIVITIES:

All employees have the right to take part in political and community activities. Employees need to ensure that participation in such activities does not place them in a real or perceived conflict of interest.

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New: <input checked="" type="checkbox"/>	Amendment:

Employees may only participate in political activities (eg. actively campaign or solicit funds for a political party or candidate) outside work hours and without using municipal property, assets or resources.

Employees engaged in community activities must continually assess their involvement and expected decision-making responsibilities in light of their employment with the municipality.

FAMILY AND PERSONAL RELATIONSHIPS:

The municipality strives to be fair, objective and transparent at all times. Municipal employees must ensure that their family and other personal relationships and their official duties are independent of each other.

As with all other areas of municipal business, it is expected that all hiring, promotions, performance appraisals or discipline will be undertaken in an objective and impartial manner. At times, this may require reporting relationships to be revised to ensure employees are not supervised directly or indirectly by a close family member.

Employees must not give preferential treatment to family or any other person with whom the employee has a personal relationship.

OUTSIDE WORK OR BUSINESS ACTIVITIES:

Employees are committed to ensuring the municipality's success in delivering services to citizens effectively and efficiently, and must act in the best interests of the municipality.

Employees must ensure that they avoid any outside employment or business activities:

- that interfere with the performance of an employee's duties;
- in which the employee has an advantage or appears to have an advantage as a result of their employment with the municipality;
- that will or might appear to influence or affect the employee in carrying out their municipal duties;
- that requires or involves use of municipal property or assets;
- that is contrary to the interests of the municipality.

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**PART: 4 – CHIEF ADMINISTRATIVE OFFICER AND
DESIGNATED OFFICER POSITIONS**

Subject 3 – Municipal Employee Code of Conduct

Page: 4.3.10

Date Issued: December 2009

New: ✓

Amendment:

PROCEDURES:

Employees are expected to comply with the Code of Conduct. Employees have a responsibility to request an interpretation of the Code from the CAO if they are unsure whether their behavior, circumstances or interests contravene the Code.

Where an employee suspects that he or she is, or may potentially be, in conflict with any of the provisions of the Code, the employee must disclose the conflict or potential conflict in writing, to:

- his or her direct supervisor, in the case of any employee. The supervisor must immediately advise the CAO.
- council or the Personnel Committee in the case of the CAO

The disclosure should include a detailed description of the conflict or potential conflict.

Where a disclosure is made, the matter will be treated seriously and in confidence. The supervisor must review the disclosure within five (5) business days, from the date the disclosure is made, and determine an appropriate course of action to address the actual or potential conflict.

An employee who fails to disclose an actual or potential conflict may be subject to discipline.

REVISIONS:

Council may, at its discretion and by resolution, amend the Code.

Municipal Act Procedures Manual

PART: 5 – PRACTICE AND PROCEDURES

Subject: 1 – List of Municipal Act By-laws

Page: 5.1.1

Date Issued: March 1997

New: √

Amendment:

5.1 List of Municipal Act By-laws

(1) Legal Requirements

Subsection 140(1) provides that councils may act only by by-law or by resolution.

Actions Requiring By-laws

Subsection 140(2) states that council must act by by-law if the legislation expressly requires a by-law. Generally, a by-law is required for a matter with continuing application or broad, long term effect (for example, changing the size of council or setting rates).

Some by-laws require the approval of, or submission to an external authority before the by-law comes into effect. Other by-laws may require the municipality to give public notice or hold a public hearing before council may give third reading. Where such additional action is required, the action must be taken before council may give third reading and pass the by-law.

It should be noted that other legislation may require municipalities to act by by-law and may set out specific requirements for the by-law's passage. Municipalities must refer to, and comply with, the requirements of the relevant statutes.

Appendix 1 sets out those matters in the Act that must be done by by-law, and indicates where council is required to take any additional action, and the nature and timing of the action.

Actions Requiring Resolutions

Subsection 140(3) provides that council may act by resolution if the legislation specifies it may be done by resolution or if the legislation is silent with respect to whether it may be done by by-law or resolution.

Municipal Act Procedures Manual

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Subject: 1 – List of Municipal Act By-laws	
Page: 5.1.2	Date Issued: February 2003
New:	Amendment: ✓

(2) Assistance with By-laws and Resolutions

Refer to Part 5.2, “Preparing a By-law” for information about drafting a by-law and the standard requirements of by-laws. For further assistance with by-laws, and assistance respecting resolutions, contact a municipal services officer.

Questions and advice of a legal nature should be directed to the municipality’s solicitor.

Municipal Act Procedures Manual

PART: 5 – PRACTICE AND PROCEDURES

Subject: 1 – List of Municipal Act By-laws

Page: 5.1.3

Date Issued: February 2003

New:

Amendment: √

Appendix 1 — Actions Under *The Municipal Act* Requiring By-laws

Section	By-law Subject	Other Required Action
79(1)	Change the number of councillors	Public notice in accordance with subsection 420(3), before third reading. By-law to be passed 180 days before the general election, subsection 79(2).
85(1)	Delegate council powers, duties and functions	
87(1)	Create/eliminate wards for election purposes	Public notice in accordance with subsection 420(3), before third reading. By-law to be passed 180 days before the general election, subsection 87(3).
124(2)	Set compensation and expenses for members of council and committees.	
125(1)	Establish position of chief administrative officer	Council must appoint, by by-law or resolution, a person to CAO position
130	Establish position of designated officer	
148(1)	Establish an organizational structure	Review at least once during term of office
149(1)	Establish rules of procedure	Review at least once during term of office
168(1)	Establish reserve funds	Limitation on expenditures from reserves under 168(2)
174(1)	Borrow money	Approval by Municipal Board, before third reading
180(1)	Lend money	
232(1)	Spheres of jurisdiction	Various, refer to other relevant statutes, e.g. Highway Traffic Act, Public Utilities Board Act, Ambulances Act, Emergency Measures Act, etc.
263(3)	Set fees for search and preparation	Subject to <i>The Freedom of Information and Protection of Privacy Act</i> (FIPPA)
277(1)	Increase social assistance payments	Approval by Minister responsible for <i>The Social Services Administration Act</i> , before third reading
283(1)	Provide for parking for physically disabled persons	
289	Open a municipal road	Register the by-law and a plan at Land Titles
290(1)	Close a municipal road	Approval by the minister, before third reading. Register the approved by-law and a plan at Land Titles
304(1)	Set and impose property taxes	No later than May 15
306(1)	Set and impose business taxes	No later than May 15
308	Set and impose a fee in lieu of business tax	

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PART: 5 – PRACTICE AND PROCEDURES

Subject: 1 – List of Municipal Act By-laws

Page: 5.1.4

Date Issued: February 2003

New:

Amendment:

Section	By-law Subject	Other Required Action
320	Approve a local improvement	Notice in accordance with section 318 and approval by Municipal Board before third reading
320	Approve a special service	Notice in accordance with section 318 and approval by Municipal Board before third reading
330	Set and impose an amusement tax	
341(1)	Set fee for tax certificate	
344	Allow a discount for prepayment of taxes	Subject to regulated maximum
345	Allow taxes to be paid in instalments or require taxes on mobile homes to be paid in instalments	
346(2)	Set and impose penalties on tax arrears	Subject to regulated maximum
405(1)	Provide a retiring employee a grant or allowance	Consent of Minister to repeal or amend
406(1)	Establish or participate in a pension plan	
406(5)	Terminate a pension plan, etc.	Consent of Minister

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PART: 5 – PRACTICES AND PROCEDURES

Subject: 2 – Preparing a By-law

Page: 5.2.1

Date Issued: March 1997

New: √

Amendment:

5.2 Preparing a By-law

(1) Legal Requirements

Subsection 140(2) states that council must act by by-law if the legislation expressly requires a by-law. However, anything done by by-law which could have been done by resolution is not invalidated strictly because a by-law was used. In order for a by-law to be legal, it must be enacted pursuant to enabling statutory authority. Without this authority, there is no legal basis for the by-law.

Section 142 provides that every proposed by-law must have three distinct and separate readings and must not have more than two readings at any one council meeting. Councillors must have the opportunity to review the full text of the by-law, before the by-law receives first reading and before it receives third reading.

Section 143 states that if a public hearing on a proposed by-law is required, the hearing must take place before third reading.

Section 145 provides that the by-law is passed when it receives third reading and is signed by the head of council, or other person authorized by council, and a designated officer. The by-law comes into effect on the day following the day it is passed, unless a later date is specified in the by-law.

Section 146 provides that if external approval of the by-law is required, the by-law does not come into force until the approval is given.

(2) Drafting a By-law

The drafting of a by-law is usually the responsibility of the chief administrative officer (CAO). The CAO may wish to consult with the following resources when drafting a by-law:

- the municipal solicitor (who may also prepare the by-law)
- sample by-laws from another municipality

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- sample by-laws from a municipal association
 - Municipal Finance and Advisory Services

The provisions of a by-law must be clear about how it is administered. Council must pass the by-law with good intention and it must not discriminate in its treatment of individuals or classes of individuals.

(3) Parts of a By-law

By-laws are written in standard form to provide consistency and clarity of legislation. Suggested parts of a municipal by-law are set out below:

1. *Corporate Title* - Use the full corporate title of the municipality on the by-law.
2. *By-law Number* - By-laws should be numbered sequentially. One method is to assign a two-digit code such as “97” at the beginning or end of the sequential number, to indicate the year (1997) in which the by-law was passed, e.g., By-law No. 1101-97.
3. *Purpose* - Include a brief statement of the by-law’s purpose, e.g., “Being a by-law to establish a reserve fund for the replacement of machinery and equipment.”
4. *Preamble* - A preamble is not essential but may help to clarify the intent of the by-law. If used, the preamble provides the authority under which the by-law is being passed including its full proper name and statutory reference.
5. *Enactment Clause* - Since only council may pass a by-law, it is council that enacts the by-law’s operative provisions. This is stated in the following clause: “The Council of The (name of municipality) enacts as follows:.”

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6. *Definitions* - The principal function of a definition section is to clarify the by-law by assigning statutory meanings to the words and expressions found in the by-law. Care should be taken to avoid modifying any words or expressions defined in the enabling legislation.
 7. *Operative Sections* - The operative sections specify the actions to be taken and set the rules and regulations for those affected by the by-law. The by-law must be specific in declaring whom or what is affected. If a schedule supplements the by-law, a reference to the schedule must state that it is attached and forms part of the by-law. The schedule should contain the by-law number and a schedule number or letter.
 8. *Offence Section and Penalty Provision* - Penalty and enforcement sections should be provided in regulatory by-laws. It is recommended that the offence and penalty provisions be separated into two statements, for example: “Every person who contravenes any provision of this by-law is guilty of an offence.”, “Every person who is convicted of an offence is liable to a fine of not more than \$ ____.”
 9. *Repeal Section* - Previous by-laws that deal with similar subjects as the new by-law may either be repealed or amended. In the new by-law, state by number and description which by-laws are to be repealed or amended.
 10. *Effective Date* - The effective date of the by-law is the day after the day it is passed unless council specifies a later date.
 11. *Passage* - Each by-law should conclude with a statement specifying the day on which the by-law was finally passed, as follows: “DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).”. If third reading is not given within two years after first reading, the previous readings of the by-law are rescinded.

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12. *Signatures and Seals* - A by-law must be signed by the head of council, or other person authorized by council, and a designated officer. Although the legislation does not specifically address the seal on documents, it is advisable to seal over the signatures, to prevent alteration of the original signatures.

(4) Sample By-law

A sample by-law, which sets out the suggested parts of a municipal by-law, is attached as Appendix 1.

Municipal Act Procedures Manual

PART: 5 – PRACTICES AND PROCEDURES

Subject: 2 – Preparing a By-law

Page: 5.2.5

Date Issued: March 1997

New:

Amendment:

Appendix 1 — Sample By-law

(Name of Municipality)

By-law No. _____

Being a by-law to establish a reserve for the replacement of machinery and equipment

WHEREAS subsection 168(1) of *The Municipal Act* provides as follows:

“A council may by by-law establish reserve funds for any general or specific purpose”;

AND WHEREAS (name of municipality) By-law No. _____ established an Equipment Repair Reserve Fund which has in its account the sum of \$_____;

AND WHEREAS it is deemed necessary and desirable to establish a Reserve Fund for the Replacement of Machinery and Equipment and to repeal By-law No. _____, being a by-law to establish an Equipment Repair Reserve Fund;

NOW THEREFORE the council of The (name of municipality) enacts as follows:

- 1) THAT a Replacement of Machinery and Equipment Reserve Fund be created.
- 2) THAT By-law No. _____ being a by-law to establish an Equipment Repair Reserve Fund be and the same is hereby repealed.
- 3) THAT the sum of \$_____, being the proceeds from the Equipment Repair Reserve Fund, be transferred to the Reserve Fund created under clause 1 above.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith, Head of Council

(Municipal Seal)

B. Jones, Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

Municipal Act Procedures Manual

PART: 5 – PRACTICES AND PROCEDURES

Subject: 3 – Organizational By-law

Page: 5.3.1

Date Issued: March 1997

New: ✓

Amendment:

5.3 Organizational By-law

(1) Legal Requirements

Subsection 148(1) requires every council to pass a by-law establishing the organizational structure of the municipality, and to review the by-law at least once during council's term of office.

Subsection 435(2) provides that every council must pass an organizational by-law within six months of the new municipal legislation coming into force, ie., before June 30, 1997.

(2) Content of the Organizational By-law

Subsection 148(2) states that the organizational by-law must provide for:

- the establishment of council committees (and, if required, other bodies of council, such as the Board of Revision) including their duties and functions.
- the manner or method of appointing a deputy head of council.
- the manner or method of appointing members to council committees.

The organizational by-law may also provide for:

- the title of the head of council, under section 80.
- whether the head of council is a member of a council committee, under subsection 107(2).

A sample organizational by-law is attached, as Appendix 1.

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Page: 5.3.2	Date Issued: March 1997
New: <input checked="" type="checkbox"/>	Amendment:

Establishment and Function of Council Committees

Council committees contribute to the efficient operation of the council, ensuring matters are given adequate consideration by an otherwise very busy council.

Council committees advise council on municipal policy and other matters pertinent to the operation of the municipality. Council committees' recommendations are not binding until passed by a resolution of council.

Council may establish the types of committees it feels are required to best meet local needs, interests and priorities. The types of council committees, therefore, differ from municipality to municipality.

The organizational by-law sets out the general and specific functions of council committees.

For example, a Transportation Services Committee's *general function* may be to:

- report from time to time on matters related to transportation services within the municipality, and to make recommendations to council as necessary.
- consider and report on any matter referred to it by council.

The Transportation Services Committee's *specific function* may be to:

- consider and report on matters relating to municipal land, buildings and equipment, including acquisition, maintenance and disposal.
- consider and report on all matters relating to municipal roads, including the opening, closing, altering or maintaining of municipal roads.
- make recommendations at the beginning of each fiscal year about projects and works considered essential, with an estimate of costs.

Under section 85, council may delegate certain council powers, duties or functions to a council committee. The power, duty or function delegated to the committee should also be set out in the organizational by-law.

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PART: 5 – PRACTICES AND PROCEDURES

Subject: 3 – Organizational By-law

Page: 5.3.3

Date Issued: March 1997

New: √

Amendment:

Manner or Method of Appointing a Deputy Head of Council

A deputy head of council acts in place of the head of council when the head is absent or unable to perform his or her duties. The organizational by-law sets the policy for how the deputy head is to be appointed, for example by:

- the head of council
- a vote of a majority of members of council, or
- some other means determined by council

Manner or Method of Appointment to Council Committees

The organizational by-law also sets the policy for the manner or method of appointing members to council committees. Again, the appointment may be by:

- the head of council
- a vote of a majority of members of council, or
- some other means determined by council

The number and membership of the council committee should also be set out in the organizational by-law.

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Number of Members

The number of members on a council committee should reflect the nature of the function of the committee. Generally, a council committee is a working group of council and so would have fewer members than council, however some councils establish “committees of the whole,” comprising all members of council.

Composition of Council Committees

Subsection 107(1) enables council committees to be composed:

- entirely of members of council
- entirely of members of the public (non-council members)
- a combination of members of council and members of the public

The ability to appoint non-elected members to council committees gives council greater access to resources and expertise than otherwise may be available.

Title of the Head of Council

Section 80 provides that the organizational by-law establishes the title of the head of council, as “mayor,” “reeve” or “head of council.” The title of the head of council reflects local preference and makes no difference in terms of the duties, responsibilities or function of the position.

Membership of Head of Council on Council Committees

Subsection 107(2) states that the head of council is member of all council committees, unless otherwise set out in the organizational by-law. Again, the membership of the head of council on council committees is a matter of local preference.

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New: <input checked="" type="checkbox"/>	Amendment:

(3) Review of the Organizational By-law

Subsection 148(1) requires council to review the organizational by-law at least once during council's term of office, to ensure the by-law's continuing appropriateness. That review may be done more frequently than once a term, at council's discretion. It is recommended that council set out a specific date in the procedures by-law for the review of the organizational by-law.

An amendment to the by-law is required if council wishes to change the organizational structure of the municipality.

Appendix 1 — Sample Organizational By-law

(Name of Municipality)
By-law No.

Being a by-law to govern the organization of The (name of municipality) and the committees thereof.

WHEREAS section 148(1) of *The Municipal Act* provides that a council must establish by by-law an organizational structure for the municipality and review the by-law at least once during its term of office.

THEREFORE BE IT RESOLVED that the council of The (name of municipality), in open meeting assembled, enacts as follows:

TITLE

1.0 This by-law may be referred to as “The (name of municipality) Organizational By-law.”

ROLE OF COUNCIL

2.0 Council is responsible

- a) for developing and evaluating the policies and programs of the municipality;
- b) for ensuring that the powers, duties and functions of the municipality are appropriately carried out; and
- c) for carrying out the powers, duties and functions expressly given to the council under this or any other Act.

GENERAL DUTIES OF MEMBERS

3.0 Each member of a council has the following duties:

- a) to consider the well-being and interests of the municipality as a whole and to bring to the council’s attention anything that would promote the well-being or interests of the municipality;
- b) to participate generally in developing and evaluating the policies and programs of the municipality;
- c) to participate in meetings of the council and of council committees and other bodies to which the member is appointed by the council;
- d) to keep in confidence a matter that is discussed at a meeting closed to the public under subsection 152(3) and that the committee decides to keep confidential until the matter is discussed at a meeting of the council or of a committee conducted in public;
- e) to perform any other duty or function imposed on the member by the council or this or any other Act.

COMMITTEES

4.0 The general duties of committees shall be as follows:

- a) To report from time to time on all matters connected with the duties imposed on the committee and to recommend such action as may be deemed necessary.
- b) To prepare and introduce to council all such by-laws as may be necessary to give effect to the reports and recommendations that are adopted by council.
- c) To consider and report respectively on any and all matters referred to them by council.

4.1 The following committees are hereby established as the Standing Committees of council:

- a) Legislative and Finance Committee
- b) Personnel and Policy Committee
- c) Protective Services Committee
- d) Transportation Services Committee
- e) Environmental Health Services Committee

- f) Water and Sewer Utility Committee
- g) Economic Development Services Committee
- h) Recreation and Culture Committee

4.2 The special duties of the Standing Committees, in addition to the aforesaid general duties, shall be as follows:

- a) Legislative and Finance Committee
 - 1) To supervise all contracts, orders, reports, recommendations and proceedings involving the expenditure of municipal funds.
 - 2) To supervise all accounts, expenditures and outlay and all sums payable under contract before any monies are paid; and no account, claim or demand not expressly authorized to be paid by a statute, by-law or resolution of council, shall be paid by the CAO until the same has been authorized by the Legislative and Finance Committee and approved by council.
 - 3) To annually review and recommend to council the types, rates and conditions of payments to be made to or on behalf of members of the council and council committees, as compensation and for expenses incurred while attending to municipal business, and for any other purpose relating to municipal business that the council considers appropriate.
- b) Personnel and Policy Committee
 - 1) To consider salary and wage negotiations.
 - 2) To consider requests for benefits.
 - 3) To assist with interviewing of new employees.
 - 4) To review and draft personnel policy.
 - 5) To review and draft job descriptions.
 - 6) To review and consider grievances of employees.
- c) Protective Services Committee
- d) Transportation Services Committee
 - 1) To consider and report on all matters relating to municipal land, buildings and equipment, including their acquisition, maintenance and disposal.
 - 2) To consider and report on all matters relating to municipal roads and their opening, closing, altering, diverting and maintenance.
 - 3) To recommend to council at the beginning of each year such projects, works and matters under its control as it considers essential to be carried out during the year, together with their detailed cost.
- e) Environmental Health Services Committee
- f) Water and Sewer Utility Committee
- g) Economic Development Services Committee
- h) Recreation and Culture Committee
 - 1) To review all applications for recreation and culture grants from organizations.
 - 2) To review the need for recreation within the municipality.
 - 3) To consider and report on matters respecting libraries and other cultural services.

- 4.3 Each Standing Committee shall be composed of two members of council and one resident elector of the municipality.
- 4.4 The head of council is a member of only those Standing Committees of council established in accordance with section 4.1 of this by-law.
- 4.5 At the first regular council meeting in each year, the council must consider the recommendations for appointments to Standing Committees and other bodies of council submitted by the head of council. All appointments to Standing Committees and other bodies of council, including naming of a chairperson, must be approved by resolution of council.
- 4.6 Regular meetings of the Standing Committees may be held as determined by each Standing Committee.
- 4.7 Special meetings of Standing Committees may be called by the chairperson or by two members of the committee in the same manner as provided in The (name of municipality) Procedures By-law.
- 4.8 Any member of council not a member of a committee has the right to attend committee meetings but shall not be allowed to vote. With the permission of the majority of the members of the committee, a visiting member of council may be allowed to take part in any discussions.
- 4.9 A special committee of council may be appointed by resolution of council at any time specifying the business to be dealt with by the committee.
- 4.10 An appointment to any committee of council may be repealed only by a resolution of the council.

HEAD OF COUNCIL

- 5.0 The head of council for the (name of municipality) is to have the title of (mayor, reeve or head of council).
- 5.1 At the first regular meeting of council in each year, council must by resolution, appoint a councillor as Deputy (mayor, reeve or head of council), who shall act in place of the (mayor, reeve or head of council) when the (mayor, reeve or head of council) is unable to carry out the powers, duties and functions of the (mayor, reeve or head of council).
- 5.2 In addition to performing the duties of a member of a council, the (mayor, reeve or head of council) has a duty
- a) to preside when in attendance at a council meeting, except where the procedures by-law or this or any other Act otherwise provides;
 - b) to provide leadership and direction to the council; and
 - c) to perform any other duty or function assigned to a (mayor, reeve or head of council) or by this or any other Act.

YOUTH MEMBER

- 6.0 The council of The (name of municipality), may, by resolution, appoint a person with the title “youth member” to sit with the council and to participate in council deliberations.
- 6.1 A youth member must be less than 18 years of age or enrolled as a full time student at (name of school or school division) and must be a resident of The (name of municipality).
- 6.2 A youth member is not permitted to move or second any resolution nor is the youth member counted for the purpose of deciding a vote of the council. A youth member is not allowed to participate in committee of the whole deliberations that are closed to the public.

6.3 The term of office for a youth member is to be established with the appointment but shall not exceed 1 year.

BOARD OF REVISION

7.1 At the first regular council meeting in each year, council shall by resolution appoint a Board of Revision to hear assessment appeals during the year.

7.2 The Board of Revision shall consist of 3 members of The (name of municipality) council and 3 other persons. The council shall appoint a member of The Board of Revision to serve as presiding officer of the Board.

SIGNING AUTHORITY

8.0 Agreements and cheques and other negotiable instruments must be signed or authorized by

- a) the head of council, or the deputy head of council, and
- b) the chief administrative officer or the assistant chief administrative officer.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

Sample

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

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Page: 5.4.1

Date Issued: June 2008

New:

Amendment : √

5.4 Procedures By-law

(1) Legal Requirements

Fair and consistent rules for council meeting and public hearing procedures are essential to ensure that municipal business is conducted in an effective and efficient manner. These rules are established in the municipal procedures by-law and should be clearly understood and adhered to by all members of council, administration and the public.

Enacting a comprehensive procedures by-law is critical to ensuring fair, open and transparent government and is a mandatory requirement for municipalities.

Subsection 149(1) requires every municipality to pass a by-law establishing rules of procedure, and to review the by-law at least once during council's term of office.

Subsection 149(2) provides that council must govern itself according to its procedures by-law.

(2) Content of the Procedures By-law

Subsection 149(3) states that the procedures by-law must provide for:

- regular meetings of council, and the day, time and place of such meetings;
- the type and amount of notice for regular meetings of council;
- the procedure to be followed and the type and amount of notice required to change a regular meeting;
- rules respecting the conduct of council meetings;
- rules respecting public participation at council meetings;
- procedure for appointing a member of council to act as head of council in lieu of the head of council and deputy head of council;

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- the type and amount of notice for special meetings of council; and
 - the time within which a special meeting of council must be called by the head of council, if requested.

Subsection 149(4) states that the procedures by-law may provide for any other matter council considers necessary or desirable, including the conduct of council committee meetings.

When making decisions for the procedures by-law, council may wish to consult:

- Bourinot's Rules of Order or Robert's Rules of Order: two excellent resources on meeting procedures and conduct. Copies of these rules may be available from most bookstores or libraries.
- the procedures by-laws of other municipalities.
- a Municipal Services Officer.

A sample procedures by-law is attached, as Appendix 1.

Required Elements of the Procedures By-law

- *Regular meetings of council* - to determine how often, when and where council meets.

Frequency of council meetings - should be sufficient for council to deal effectively with the matters coming before council (eg. once or twice a week, once every two weeks, once a month).

Time of council meetings - should be consistent and encourage public attendance (eg. during the day, in the evening, alternate day/evening). A regular meeting day of the week should be set (eg. Monday, Tuesday) including a procedure for an alternate meeting day if the regular meeting day falls on a legal holiday.

Location of council meetings - is typically the municipal office. Some councils also choose to establish alternate meeting locations.

- *Type and amount of notice of regular meetings* - to ensure the public is aware of when and where regular council meetings are held.

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Type of notice - may include:

- posting a copy of the upcoming meeting agenda (in the municipal office and on the website).
- posting a schedule of meetings in the municipal office, on the website and prominent places throughout the municipality.
- advertising in the local newspaper, radio or television station.
- any other means, or combination of means.

Amount of advance notice - reflects local circumstances and depends on how frequently meetings are scheduled. Some municipalities may post notice of regular meetings once a year, for the whole year; others may choose to give one week notice.

- *Procedure to change a regular meeting* - to advise members of council and the public.

A resolution of council is required to change the date of a regular meeting. Appropriate advance notice must be given.

- *Rules of conduct at council meetings* - to ensure that council meetings run consistently and smoothly.

Rules may be established for:

- an order of business.
- points of order, and how they are to be addressed by the Chair.
- a procedure to follow when two or more members of council address the Chair at the same time.
- who may speak to a question before council, when a person may speak, a time limit for speaking, and for extending that time limit.
- disturbances at a meeting, and how the Chair may deal with a member of council or the public who creates the disturbance.

- *Rules for public participation at council meetings* - to ensure that the public participation is effective and non-disruptive.

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Rules may establish:

- a time within which delegations may register to be heard by council (before the agenda is posted);
 - a time within which delegations may register to speak to council regarding a matter included on the agenda (after the agenda is posted);
 - the order of business delegations to be heard;
 - the order of business petitions to be received;
 - a time limit for speaking, and for extending that time limit;
 - whether the exchange of information is through the Chair, or another member of council’;
 - conduct that is prohibited;
 - the maximum number of persons allowed in the council chambers.
- *Procedure for appointing a member of council as head* - to act in the absence of both the head of council and deputy head of council.

Council may decide how to appoint a member of council as Chair in lieu of the head or deputy head. That appointment may be by:

- previous appointment by the head of council
 - a vote of a majority of members of council present, or
 - some other means determined by council
- *Type and amount of notice for special meetings* - to advise members of council and the public, is at the discretion of council. Subsection 151(2) provides that notice of a special meeting must be given in accordance with the procedures by-law.
 - *Time within which a special meeting must be called by the head* - to ensure that a special meeting is held as requested under section 151.

Other Elements of the Procedures By-law

- *Conduct of council committees* - Generally, council committee meetings will follow the same procedures set for council meetings, however, council is free to establish different rules for committees, (excluding an LUD committee) as it sees fit.

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- *Type and amount of notice for council committee meetings* - Again, the type and amount of notice for committee meetings are often the same as that for council meetings. There may be variations, however, to reflect the different type of committees and their varying responsibilities.
 - *Review of the organizational by-law and procedures by-law* - Council may choose to set aside a regular meeting to review these by-laws (eg. the second meeting every year or at the inaugural meeting following a general election), to ensure that these by-laws are reviewed as required.
 - *The meeting agenda* - This establishes procedures to determine when the agenda should be in the possession of council, the media and the general public, how items may be added to the agenda, the deadline for receipt of information by staff to be included in the agenda, the deadline for notification to staff by a delegation of their wish to be included on the agenda and present at the next council meeting, the deadline for notification to staff by a delegation of their wish to speak to an item that has been included on the meeting agenda (after the agenda is posted) etc.
 - *The time when the meeting is to be adjourned* - This establishes procedures to determine how long a meeting should wait for a quorum of members, when the meeting should be adjourned (eg. a set time despite the incompleteness of council business, continuation of the meeting with a majority or unanimous vote, a time limit, etc.).
 - *The recording of votes in the minutes of council meetings* - This establishes a procedure to determine whether a recorded vote should be permitted on request, when that request should be made, what information should be recorded, etc.
 - *The recording of abstentions* - Council may wish to require all abstentions from voting to be recorded in the minutes.
 - *Provision for audio/video taping of meetings* - Council may wish to set rules to permit the public or the media to audio or videotape the meeting proceedings.

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Subject: 4 – Procedures By-law

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Date Issued: June 2008

New:

Amendment : √

- *Appointment of signing authority for other municipal documents* - If council has no other by-law in place, the appointment may be made in the procedures by-law.
- *Delegation of authority* - Council may wish to set out the delegated authority to head of council, the chief administrative assistant (CAO) or a designated officer. (Delegated authority to a council committee should be set out in the organizational by-law.) Council is advised to delegate to the CAO the authority to handle routine business for the period after a general election and before the new council is sworn in.
- *Procedures for public hearings* - To allow for the efficient flow of proceedings at public hearings, council may wish to make all or any part of council rules of conduct apply to public hearings.

(3) Review of the Procedures By-law

It is important for Council to ensure that the procedures by-law continues to be relevant and meets the municipality's needs.

Subsection 149(1) requires council to review the procedures by-law at least once during council's term of office, to ensure the by-law's continuing appropriateness. That review may be done more frequently than once a term, at council's discretion. It is recommended that council set aside a specific date in the procedures by-law for the review.

An amendment to the procedures by-law is required if council wishes to change the procedures established in the by-law.

(Name of Municipality)
By-law No.

Being a by-law to regulate the proceedings and conduct of the council and the committees thereof.

WHEREAS section 149(1) of *The Municipal Act* provides that a council must establish by by-law rules of procedure and review the by-law at least once during the term of office.

THEREFORE BE IT RESOLVED that the council of the (name of municipality), in open meeting assembled, enacts as follows:

TITLE

- 1.0 This by-law may be referred as “The (name of municipality) Procedures By-law”.
- 1.1 The following rules and regulations shall be observed in council, and in all committees thereof.

DEFINITIONS

- 2.0 In this by-law,
 - a) “Agenda” means the agenda for a regular or special meeting of council or committee of council.
 - b) “Act” means The Municipal Act S.M. 1996 c.58.
 - c) “Chair” means the person presiding at the meeting of council or committee.
 - d) “Committee” means a committee or other body established under The (name of municipality) Organizational By-law, but does not include a committee of the whole council or Local Urban District. .
 - (e) “Committee of the Whole Council” means a committee of all members present at a council meeting sitting as a committee.
 - (f) “Council” means the duly elected mayor (or reeve) and councillors of The (name of municipality).
 - (g) “Council Meeting” means a regular meeting or special meeting of the council but does not include a public hearing held by the council.
 - (h) “In Camera” means in private or to the exclusion of the public.
 - (i) “Members” means, when referring to the council, the councillors and the mayor (or reeve).
 - (j) “General Holiday” means each Saturday and Sunday, and includes such days as New Year’s Day, Good Friday, Easter Monday, Victoria Day, Dominion Day, The First Monday in August, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any other day declared a holiday by the Provincial or Federal Government.

SUSPENSION

- 3.0 Any rule contained in this by-law may be suspended by a vote of the majority of the members present, except in cases where the Act or by this by-law, some other vote is required.

COUNCIL INAUGURAL MEETING

- 4.0 Following a general election, the mayor (or reeve) must call the Inaugural Meeting of Council within (30) days, and the meeting shall be held at (time) and (place).
- 4.1 Council must at its Inaugural Meeting review the Procedures and Organizational by-laws.

QUORUM

- 5.0 A majority of the members of council constitutes a quorum. A quorum of council for the (name of municipality) shall be _____ members.

- 5.1 If a position on council is vacant, the quorum will be the majority of the remaining members of council provided that the minimum number for a quorum cannot be less than 3 members. In the case of a council committee, the minimum number for a quorum is 2.
- 5.2 Lack of quorum - If no quorum is present within (30) minutes after the time scheduled for a meeting, the council shall stand adjourned, and the CAO shall enter into the minutes the names of the members present at the meeting.

COMMUNICATION FACILITY

- 6.0 Any member of council participating in a meeting of council by means of a communication facility shall do so only with prior approval of council and on terms and conditions set by council.
- 6.1 Members of council participating in a meeting of council by means of a communication facility are deemed to be present at the meeting.

AGENDA

- 7.0 A draft agenda of each regular meeting of council, as prepared by the CAO, together with copies of supporting materials shall be available to the members of council at least (96) hours preceding the meeting of council. A copy of the draft agenda shall be posted in the municipal office and on the municipal website at the same time.
- 7.1 All items to be placed on the agenda of the next regular meeting of council must be provided to the CAO at least (120) hours prior to the scheduled time of the regular meeting.
- 7.2 Items may be added to the agenda at a regular meeting of council by a majority vote of the members present, prior to adopting the final agenda for the regular meeting of council.
- 7.3 In preparing the council agenda, the CAO shall state the business for consideration in accordance with the following order of business:
- call the meeting to order
 - confirmation of the minutes
 - adoption of the agenda
 - reception of delegations
 - reports of committees
 - reception of petitions
 - communications
 - accounts
 - by-laws
 - unfinished business
 - general business
 - notice of motion
 - adjournment
- 7.4 Notwithstanding the provisions under 7.3, it shall always be in order for the council to vary the order in which business on the agenda shall be dealt with by a majority vote of the members present.

REGULAR MEETING

- 8.0 Regular meetings of council shall be held on the 2nd and 4th day of each month in the council chambers of the (name of municipality) at the hour of 2:00p.m. and 7:00 p.m. respectively. A notice prior to the first council meeting each year shall be posted in the municipal office and on the municipal website outlining the regular meeting schedule for that year.

- 8.1 All meetings of Council shall be chaired by the mayor (or reeve), or in his absence, by the deputy mayor (or deputy reeve). If the mayor (or reeve) or deputy mayor (or deputy reeve) is not present at the time scheduled for a meeting, the council may appoint one of its members to chair the meeting.
- 8.2 If the day fixed for a regular meeting of council is a general holiday, the meeting shall be held on the next day following which is not a holiday at the same time and place.
- 8.3 Council may by resolution vary the date and time of a regular meeting as circumstances may require.
- 8.4 Notice of any change of day or time of a regular meeting of council must be posted in the municipal office and on the municipal website at least ____ days before the regularly scheduled date of the meeting.
- 8.5 At the hour set for a meeting to commence, and providing that a quorum is present, the mayor (or reeve) shall take the chair and shall call the meeting to order.
- 8.6 The council shall observe a curfew whereby the item on the agenda under discussion at (11:00 p.m.) will be the last item dealt with on that day unless by majority vote the council decide to extend the time of adjournment. In any case, only one half hour extension is allowed.
- 8.7 Council shall hold its meetings openly and no person shall be excluded, except for improper conduct.
- 8.8 Despite clause 8.7 of this by-law, council or council committee may close a meeting to the public if:
- (a) the members decide during the meeting to meet as a committee to discuss a matter, and
 - (b) the decision and general nature of the matter are recorded in the minutes of the meeting; and
 - (c) the matter to be discussed relates to
 - (i) municipal assistance,
 - (ii) an employee, including the employee's salary, duties and benefits and any appraisal of the employee's performance
 - (iii) a matter that is in its preliminary stages and respecting which discussion in public could prejudice the municipality's ability to carry out its activities or negotiations,
 - (iv) the conduct of existing or anticipated legal proceedings,
 - (v) the conduct of an investigation under, or enforcement of, an Act or by-law,
 - (vi) the security of documents or premises, or
 - (vii) a report of the Ombudsman received by the head of the council under clause 36(1)(e) of *The Ombudsman Act*.
- 8.9 No resolution or by-law may be passed at a meeting that is closed to the public, except a resolution to reopen the meeting to the public.

SPECIAL MEETINGS OF COUNCIL

- 9.0 A special meeting of council of the (name of municipality) may be called at any time by the mayor (or reeve), and must be called by the mayor (or reeve), if the mayor (or reeve) receives a written request from at least two members of council stating the purpose. A copy of the written request must also be served on the CAO.
- 9.1 Should the mayor (or reeve) not call a special meeting within (48) hours of receiving written request by two members of council, the CAO must call the meeting in accordance with section 9.2 of this by-law.
- 9.2 The notice of the special meeting to all members of council may be oral, in electronic or written form, and must state the purpose of the meeting, and must be provided to all members of council and posted in the municipal office and on the website at least (48) hours before the scheduled time of the meeting.

- 9.3 Should the head of council be unavailable, the deputy head of council may call a special meeting only if requested in writing by 2 members in accordance with this part.
- 9.4 Any member of council may waive the right to be given notice by giving written notice to the CAO and having done so shall be deemed to have been given notice of a special meeting of council.
- 9.5 At a special meeting, no subjects or matters, other than those mentioned in the notice calling the meeting, shall be taken into consideration, unless all members of council are present, and the members unanimously agree by resolution to adding of items to the agenda.

DELEGATIONS

- 10.0 The Chair may limit the time taken by a delegation to (10) minutes. The delegation must appoint a spokesperson.
- 10.1 To allow members of council to prepare for delegations, all presenters shall register with the CAO at least (120) hours before the council meeting and advise the CAO of the topic and scope of the presentation.
- 10.2 Persons wishing to appear as a delegation in regards to an item placed on the agenda provided to the public 96 hours prior to the scheduled meeting, shall register with the CAO a minimum of two (2) hours before the council meeting and advise the CAO of the topic of the presentation. In any case, registration of a delegation must occur prior to the commencement of a council meeting.
- 10.3 There shall not be a limit to the number of delegations included on the agenda of a council meeting, but the CAO is granted authority to schedule delegations as deemed appropriate.
- 10.4 The public shall not participate in discussion at a council meeting, unless by unanimous consensus of the members present, or if necessary a majority vote of council, the public is asked for their participation.

VOTING

- 11.0 A member has one vote each time a vote is held at a council meeting at which the member is present.
- 11.1 The minutes of a meeting at which council votes on the third reading of a by-law must show the name of each member present, the vote or abstention of each member, and the reason given for any abstention.
- 11.2 The CAO must record in the minutes the name of any member who exercises his right to abstain from voting on any resolution.
- 11.3 If an equal number of members vote for and against a resolution or by-law, the resolution or by-law is defeated.
- 11.4 Council may not reconsider or reverse a decision within one year after it is made unless:
a) at the same meeting at which the decision is made, all the members who voted on the original resolution are present and agree to reconsider and vote again; or
b) a member gives written notice to the council, from at least one regular meeting to the next regular meeting, of a proposal to review and reverse the decision.
- 11.5 When council reconsiders and reverses a decision, the minutes must show the original decision and the decision made on reconsideration.

- 11.6 Any member of council may, prior to the taking of a vote on any question put, require a recorded vote to be taken. The CAO must record in the minutes of the meeting of council the names of the members present, the vote or abstention of each member.

PROCEDURE AT PUBLIC HEARING

- 12.0 Each member of Council must attend a public hearing called by council unless the member:
- (a) is excused by the other members from attending the hearing;
 - (b) is unable to attend owing to illness,
 - (c) is required under *The Municipal Council Conflict of Interest Act* to withdraw from the hearing.
- 12.1 The Chair of the public hearing has the right to limit the time taken by a person to (10) minutes, after which council may wish to ask questions of the person. All questions must be channelled through the Chair of the hearing.
- 12.2 The Chair of the public hearing may decline to hear further presentations, questions or objections where he is satisfied that the matter has been addressed at the public hearing.
- 12.3 The Chair of the public hearing may decide which presenters will be heard, if he is satisfied that presentations are the same or similar.
- 12.4 The Chair of the public hearing may require any person, other than a member of council, who is in the opinion of the Chair conducting himself in a disorderly or improper conduct, to leave the public hearing and if that person fails to do so, may cause that person to be removed.
- 12.5 If a public hearing is adjourned, the council shall provide a public notice of the date, time and place of the continuation of the hearing, unless information is announced at the adjournment of the hearing.

BY-LAWS AND RESOLUTIONS

- 13.0 Council may act only by resolution or by-law.
- 13.1 No motion shall be debated or put unless it is in writing and is seconded, excepting only a motion to adjourn which need not be in writing.
- 13.2 Every proposed by-law must be given three separate readings, and each reading must be put to a separate vote.
- 13.3 Council may not give a proposed by-law more than two readings at the same council meeting.
- 13.4 Only the title or an identifying number must be read at each reading of a proposed by-law.
- 13.5 Each member present at the meeting at which first reading is to take place must be given, or have had, the opportunity to review the full text of the proposed by-law before the by-law receives first reading.
- 13.6 Each member present at the meeting at which third reading is to take place must, before the proposed by-law receives third reading, be given, or have had, the opportunity to review the full text of the proposed by-law and any amendment passed after first reading.

HEAD OF COUNCIL TAKING PART IN DEBATE

- 14.0 If the Chair desires to present or second a motion, or participate in the debate, he must leave the chair, and call upon one of the members to fill his place until he resumes the chair.
- OR**
- If the chair desires to present or second a motion, or participate in debate, he can do so without leaving the chair.

CONDUCT

- 15.0 Every member previous to his speaking shall address the Chair.
- 15.1 When two or more members address the Chair at the same time, the Chair shall name the member who is to speak first.
- 15.2 When the Chair is called on to decide a point of order or practise, he shall do so without comment unless requested to do so.
- 15.3 When the Chair is putting a question, no member shall leave his chair.
- 15.4 Discussion shall be limited to the question in debate.
- 15.5 No member shall speak to the question or in reply for longer than (5) minutes without approval of council.
- 15.6 A motion to adjourn takes precedence over all others and may be moved at any time, but the question cannot be received after another question is actually put and while council is engaged in voting.
- 15.7 Immediately before putting the question, the Chair shall have the privilege of summarizing the debate, but no new matter shall be introduced.
- 15.8 Where at a council meeting, any person other than a member of council is, in the opinion of the Chair, conducting himself in a disorderly or improper manner, the Chair may require that person to leave the meeting and if that person fails to do so, may cause that person to be removed.
- 15.9 Where at a council meeting a member of the council is conducting himself in a disorderly or improper manner, the council may, by a resolution passed by the majority of the other members present, require the member to leave the meeting, and if the member fails to do so, may cause the member to be removed.
- 15.10 Persons in the council chambers are not permitted to display signs or placards to applaud participants in debate or to engage in conversation or other behaviours which may disrupt council proceedings.
- 15.11 Council may limit the number of persons allowed in the council chambers.
- 15.12 The public and media may audio/video tape meeting proceedings, including public hearings providing that arrangements are made with the CAO at least (24) hours prior to the meeting or public hearing.
- 15.13 A member must keep in confidence a matter that is discussed at a meeting closed to the public under subsection 152(3) of the Act until the matter is discussed at a council meeting conducted in public.
- 15.14 A member who breaches the requirement of confidentiality under clause 15.13 becomes disqualified from council.

All points of order and procedure not resolved by rules provided in this by-law shall be resolved by a majority decision of council.

By-law No. _____ is hereby repealed.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(municipal seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

Sample

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5.5 Closed (“In Camera”) Meetings

(1) Legal Requirements

Municipalities, like all governments, are expected to operate in an open and transparent manner. Subsections 152(1) and 152(2) require Council business to be conducted in an open meeting that can be attended by the public. This ensures that the public can hear Council’s debate and know Council’s decisions.

Local Urban District (LUD) committee meetings must also be held in public, as an LUD committee is considered a committee of Council under subsection 112(1).

Subsection 152(4) states that Council decisions (by-laws and resolutions) can only be passed at an open meeting. No resolutions or by-laws may be passed at a closed meeting.

Closed, or “in camera” meetings are allowed only in a limited number of circumstances. Subsection 152(3) is very specific about the topics that Council may discuss in a closed meeting. If a decision is made to close a meeting, the minutes of the meeting must record the decision to close and the general nature of the matter to be discussed in private.

(2) Permitted Circumstances for Closing a Meeting

Subsection 152(3) sets out the permitted circumstances when a meeting of council or a council committee may be closed to the public. A council meeting can only be closed to discuss:

- personnel matters (e.g., employee information including salaries, benefits, duties, performance appraisals, etc.)
- preliminary discussions on matter that if discussed in public could affect the municipality’s ability to carry it out (e.g., early discussions about selling surplus municipal land)
- unresolved legal matters
- an investigation being conducted under the authority of a by-law (e.g., investigation of an unsafe property)
- issues that deal with security of documents or property (e.g., establishing an alarm system for municipal facilities)
- a report of the Ombudsman, where the Ombudsman requires the report to be considered at a closed meeting under Section 36(1)(e) of *The Ombudsman Act*.

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If a matter does not fall within a permitted circumstance, council or the committee must hold the meeting in public. If there is any doubt about whether a meeting may be closed to discuss a particular matter, council is advised to defer the discussion on the matter and request legal advice from the municipality’s solicitor.

A Council may only exclude the public and media from a meeting by passing a resolution to meet as a committee of the whole in a closed meeting. The resolution must state the topic of the matter to be discussed in the closed meeting.

(3) Duty of Confidentiality

All council members have a legislated duty to keep confidential a matter that is discussed at a meeting that has been closed to the public under clause 83(1)(d). A breach of this duty is grounds for disqualification from office from office under clause 94(1)(h). Council members are, however, permitted to discuss confidential information with the chief administrative officer or the designated officer under Section 84.

To ensure the confidentiality of matters discussed in camera, council should establish procedures in their Procedures By-Law for ensuring that matters discussed at in camera meetings are kept private until the matter is discussed at a council meeting that is open to the public. See Part 5.4 (Procedures By-Law), page 12 for a sample procedure. Records of matters discussed in closed council meetings are not required to be disclosed to the public through a FIPPA request. (See Part 9.1, Access to Information).

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5.6 Petitions

(1) General Information

This section summarizes and explains the areas of *The Municipal Act* that deal with petitions.

Municipalities may wish to make copies of this summary available to members of the public who request information about petitions and how to petition council.

This summary is not a legal document, but may be used to assist with the interpretation of the legislation. The intent of the summary is to identify areas relating to petitions, and to supplement and explain specific sections or applications of the Act.

Individuals wishing to initiate a petition are urged to obtain a copy of the relevant sections of *The Municipal Act*.

The Municipal Act is available online at:

<http://web2.gov.mb.ca/laws/statutes/ccsm/m225e.php>

Paper copies of *The Municipal Act* may be purchased from the Queen's Printer website at:

<http://www.gov.mb.ca/queensprinter/>

(2) Definitions

To assist the public, the following definitions may be helpful:

- “Chief administrative officer (CAO)” means a person appointed as a chief administrative officer under subsection 125(1) of *The Municipal Act*;
- “Council” means the council of a municipality;

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- “Elector” means an elector as defined in *The Local Authorities Election Act* of Manitoba;
 - “*Municipal Act*” means *The Municipal Act* of Manitoba;
 - “Municipal Board” means The Municipal Board established under *The Municipal Board Act*;
 - “Petition” means a formal request signed by the public, eligible or actual electors, or property owners, as may be required;
 - “Petitioner” means the person who signs the petition.

(3) Legal Requirements

Section 11 sets out the process under the Act for a petition for formation or dissolution of a municipality to be submitted to The Municipal Board.

Part 5, Division 3 sets out the process for petitions for circumstances where a petition to council is required under *The Municipal Act*.

It should be noted that council may be petitioned for any matter. However, where a formal petition is required under the Act, that petition must meet the sufficiency requirements of the Act.

(4) Who May Petition?

Generally, any member of the public is an eligible petitioner. However:

- only persons eligible to be electors of a municipality may petition The Municipal Board to form a municipality. [Subsection 10(1)]
- only electors of a municipality may petition The Municipal Board to dissolve a municipality. [Subsection 10(1)]

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- only persons eligible to be electors of a local urban district may petition to form a local urban district. [Subsection 57(1)]
- only electors of a local urban district may petition to dissolve a local urban district. [Subsection 66(1)]
- only those liable to pay the property tax may petition for a local improvement or a special service. [Section 313]

(5) Number of Petitioners Required

For specific types of petitions, a minimum number of petitioners is required:

- 30% of persons who would be electors to form a municipality or who are electors to dissolve a municipality. [Subsection 10(1)]
- a majority of electors in the locality to form a local urban district. [Subsection 57(1)]
- 2/3 of the electors of the local urban district to dissolve the district. [Clause 66(1)(a)]
- 2/3 of the potential taxpayers to propose a local improvement or special service. [Section 313] Only one person is counted for each parcel of land or business. [Subsection 154(6)]

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(6) Sufficiency of Petitions

Requirements of a Sufficient Petition

Sections 11 and 154 set out the requirements of a sufficient petition:

- a statement of purpose on every page (only for petitions to council)
- required information for each petitioner:
 - the printed surname and given name or initials of the petitioner
 - the petitioner's signature
 - the date on which the petitioner signed the petition, which must be within 90 days of the petition being filed
 - the address of the petitioner's residence
 - if the petition is to form a municipality or a local urban district, a statement that the petitioner is an eligible elector of the proposed municipality or locality
 - if the petition is to dissolve a municipality, a statement that the petitioner is an elector of the municipality
 - if the petition is to initiate or object to a local improvement or special service, the address of the property in respect of which the petitioner is liable to pay the tax
 - the signature of an adult witness opposite the signature of the petitioner and where required, a statutory declaration of the witness
- signature of an adult witness opposite the signature of the petitioner, and if required, a statutory declaration
- if a minimum number of petitioners is required, the signatures of at least that number of petitioners
- signed statement of a representative of the petitioners, and the address of the representative.

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New:

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Determining Sufficiency

Subsection 11(7) requires a petition to The Municipal Board to be filed with the secretary of the board.

Section 155 requires a petition to the council to be filed with the chief administrative officer (CAO) or designated officer (DO).

The secretary of the board or the CAO or DO, as the case may be, is responsible for determining the sufficiency of the petition not later than 30 days after the petition was filed.

Refiling of Petitions

Subsections 11(9) and 156(2) provides that if the petition is insufficient, the Secretary or the CAO, as the case may be, must give written notice of the manner in which the petition is not sufficient to the person named a representative of the petitioners, not later than 30 days after the filing.

The petition may be re-filed, with or without changes, within 30 days after the notice has been given, and its sufficiency re-determined.

The Secretary or the CAO must determine the sufficiency of the re-filed petition.

Report on Sufficiency

Within 30 days of the petition being filed (or re-filed), the secretary or CAO must present the petition to The Municipal Board or council, as the case may be.

The Municipal Board or council has ultimate responsibility for determining the sufficiency of a petition.

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Response to a Valid Petition

Under section 10, upon acceptance of a sufficient petition, The Municipal Board begins the process of review if the petition is for the formation or dissolution of a municipality.

Under section 159, a council must take action on the petition only if required by *The Municipal Act* or any other enactment. Under *The Municipal Act*, council must act on a sufficient petition for:

- forming a local urban district, by meeting with the representative to discuss and negotiate the formation. [Section 58]
- dissolving a local urban district, by referring the petition to the Minister. [Subsection 66(2)]
- proposal for a local improvement or special services tax, by preparing a plan or proposal. [Section 313]

(7) Samples

A sample petition is attached, as Appendix 1. The format of the petition must be adapted to accommodate the requirements of the various types of petitions, as noted above.

A sample of the statutory declaration is attached, as Appendix 2.

A sample format for the signed statement is attached, as Appendix 3.

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Date Issued: March 1997

New: √

Amendment:

Appendix 1 — Sample Petition

PETITION BY PROPERTY OWNERS

pursuant to section 313 of *The Municipal Act*

To: The Council of The (name of municipality) in the Province of Manitoba.

The undersigned persons, being property owners of The (name of municipality), in the Province of Manitoba, petition council for:

[Accurately state purpose and objectives of petition in this space.]

EACH PETITIONER by signing this petition certifies that he or she is liable to pay the property tax in respect of the property at the address so noted, in The (name of municipality).

Printed Name of Petitioner	Signature of Petitioner	Street Address or Legal Description of Land	Date	Signature of Adult Witness

NOTES:

1. The format of the petition must be adapted to accommodate petitions by the general public or electors, as the case may be, as well as petitions made to The Municipal Board for forming or dissolving a municipality.
2. Each page of the petition must contain an accurate and identical statement of the purpose and objectives of the petition. As the wording of the petition is critical, legal advice should be sought.
3. In the absence of a municipal address, the legal description of property on which a petitioner resides may be provided.
4. Each person witnessing a signature on the petition is required to sign a statutory declaration that, to the best of the person's belief, the persons whose signatures they witnessed are eligible to sign the petition. The person collecting names or circulating the petition may act as a witness for each signatory.

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Appendix 2 — Sample Statutory Declaration

STATUTORY DECLARATION

pursuant to subsection 154(4) of *The Municipal Act*

I, _____, of The (name of municipality) in the Province of Manitoba, MAKE OATH AND SAY:

1. THAT I was personally present and did witness those signatures on the attached petition where I have signed my name as an adult person.
2. THAT to the best of my belief the persons whose signatures I have witnessed are eligible to sign the petition, as property owners liable to pay the property tax, in The (name of municipality).

Sworn (or affirmed) before me)
at the _____ of _____)
in the Province of Manitoba)
this (day) of (month) (year).)

(signature of person who witnessed the petition)

A Commissioner for Oaths
(or as the case may be)

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New:

Amendment:

Appendix 3 — Sample Statement of Representative of Petitioners

STATEMENT OF REPRESENTATIVE OF PETITIONERS

pursuant to subsection 154(9) of *The Municipal Act*

I, _____, of The (name of municipality), in the Province of Manitoba, state that I am one of the petitioners whose name appears on the petition attached and that I represent the petitioners and am the person to whom the municipality may direct inquiries with regard to the petition.

Dated at the _____ of _____, in the Province of Manitoba, this (day) of (month) (year).

(Signature of Representative)

(Printed Name)

(Address)

(Telephone Number)

(Witness)

Note: Use the “Statement of Representative of Petitioners” as the last page of the petition.

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Subject: 1 – The Financial Plan	
Page: 6.1.1	Date Issued: February 2018
New:	Amendment: √

6.1 The Financial Plan

(1) Legal Requirements

Subsection 162(1) requires council to adopt a financial plan for each year consisting of:

- an operating budget
- a capital budget
- an estimate of operating revenue and expenditures for the following fiscal year
- a five-year capital expenditure program.

Subsection 162(2) requires council to give public notice under section 420 and hold a public hearing before adopting the plan.

Subsection 162(3) requires council to hold another public hearing on the financial plan if, prior to adoption of the plan, a revision is made that:

- increases the amount of the transfer from accumulated surplus or reserve, or the estimated revenue generated from a tax, or
- increases any of the amounts in the capital budget.

Subsection 162(4) requires a signed copy of the plan to be filed with the Minister by May 15 of that year in a form approved by the minister.

Section 304 requires the municipality to pass a tax levy by-law by May 15, and file a copy with the minister by June 15.

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New:	Amendment: √

Municipal Finance and Advisory Services requests municipalities to submit signed copies of their adopted financial plan and tax levy by-law electronically, through Manitoba Municipalities Online:

<http://www.gov.mb.ca/assessment/subscriber>

The suggested time frame for the financial plan process is attached, as Appendix 1.

(2) Approved Form of the Financial Plan

A financial plan template is available through [Manitoba Municipalities Online](#).

(3) Preparing the Financial Plan

The Financial Plan Checklist

A “Financial Plan Checklist” is available through [Manitoba Municipalities Online](#).

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New:	Amendment: √

(4) The Public Hearing on the Financial Plan

Purpose of the Public Hearing

The purpose of the public hearing on the financial plan is to help municipalities educate the public about the financial situation of the municipality and to assist the public to understand how tax dollars are being spent. The public hearing gives the public the opportunity to speak to the plan and ask questions about the plan, and also gives council the opportunity to respond to those questions.

The benefits of the public hearing are:

- opportunity for public participation and input in the municipality's short and long-term goals.
- public understanding of the relationship between services and taxes, and the difficult decisions that must be made by council in determining an appropriate balance between the two.
- public understanding that requests for services, grants etc. should be presented to council before the annual budget hearing, to ensure any request may be duly considered.
- council understanding of the municipality's financial position, and development of the municipality's short and long term goals and priorities.

A sample public hearing notice for the financial plan is located in Appendix 1, Part 14.1, "Public Notices".

Public Hearing Guidelines

In addition to the public hearings requirements under section 160, council may wish to have specific procedures for public hearings stated in the procedures by-law, to guide how information is to be provided and received at the public hearing. Such guidelines would provide for:

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- an agenda, to set out what is to be accomplished at the public hearing.
 - a question and answer period.
 - clarification of the intent of the hearing.

Effective Presentation of the Financial Plan

Provide Appropriate Information

Subsection 420(2) requires municipalities to make available to the public relevant information about a matter discussed at a public hearing. Because the financial plan may be very detailed and therefore has potential to be confusing, municipalities may consider developing an information package on the plan. Municipalities are also advised to have copies of the financial plan available for public review.

(5) Tax Statements

Tax statements are printed and distributed to municipalities by Indigenous and Municipal Relations, Information Systems Branch. The form of the tax statements is approved by the Minister.

Municipalities are responsible for mailing tax statements to property owners. Under *The Municipal Act*, municipalities are required to send tax statements by mail to property owners by August 31 each year.

Tax statements include:

- General municipal tax, and other taxes levied by the municipality (i.e., taxes for Local Urban Districts, local improvement, special services, etc.)
- Education taxes: collected by municipalities on behalf of School Divisions and the Public Schools Finance Board. Includes the School Division Special Levy and the Education Support Levy (on commercial properties only). The School Division Special Levy is remitted to School Divisions and the Education Support Levy is remitted to the Public Schools Finance Board as required under *The Public Schools Act*.

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Appendix 1 — Suggested Dates in the Financial Plan Process

Date	Activity	Authority
January	Adopt interim operating budget	s. 163
February to April	Establish financial plan (two-year operating budget, a capital budget, and a five-year capital plan) to be presented at public hearing	s. 162(1)
February to April	Advertise and hold public hearing for presentation of financial plan	s. 160, 162 and 420
March/April	Request ministerial approval for budgeted deficit prior to adoption of financial plan	s. 164(3) and 164(4)
March/April	Request ministerial approval for transfers from accumulated surplus and general reserve if guidelines established by regulation are exceeded prior to adoption of tax levy by-law	s. 164(5) and Regulation
March/April	Revise operating or capital budget	s. 162(3)
March to May	Advertise and hold public hearing if revised budgets result in increased revenue from taxation, increased transfer from accumulated surplus or general reserve or any increase in the capital budget	s. 162(3)
May 15	Adopt by resolution the financial plan and file copy with minister	s. 162(4)
May 15	Adopt tax levy by-law (3 readings)	s. 304(1)
June 15	File copy of tax levy by-law with Minister	s. 304(2)
June to December	Obtain ministerial approval of any anticipated general or utility operating deficit not budgeted for	s. 165

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Subject: 2 – Municipal Audits - Appointment, Proposal and Evaluation	
Page: 6.2.1	Date Issued: April 2022
New:	Amendment: ✓

6.2 Municipal Audits — Appointment, Proposal and Evaluation of Audit Engagements and Reporting Requirements

(1) Legal Requirements

Municipal Auditor Appointments

Subsection 184(1) of The Municipal Act (the Act) requires council to appoint an auditor each year by August 31.

Subsection 184(3) of the Act requires the council to inform the Minister of the name of the auditor within 40 days after the appointment. A copy of Council’s appointment resolution is to be submitted on Manitoba Municipalities Online (MMO) under Submit/View Municipal Report – Municipal Report and may be access at <https://www.gov.mb.ca/mao/mmo>.

Municipal Audits

Subsection 186(1) of the Act sets out the scope of the auditor’s examination respecting the financial statements, financial information returns, records, books of account and other information relating to the financial affairs of the municipality including (but not limited to):

- any funds of the municipality held in trust for the municipality
- any board, committee or other body that is established or appointed by the council and that administers funds of the municipality.

Subsections 187 and 188 of the Act entitles the auditor for the purpose of the audit to access all records and other information as required.

Reporting Requirements

Subsection 183(1) of the Act requires the municipality to prepare annual financial statements for the preceding year according to generally accepted accounting principles as recommended from time to time by Chartered Professional Accountants of Canada (CPA Canada) and any modifications as approved by the minister.

Financial statements templates and worksheets have been developed and may be accessed on Manitoba Municipal Relations’ webpage.

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Section 190 of the Act requires the auditor to report to the council no later than June 30 in the year following the year for which the audit is prepared, identifying the financial statements audited and providing an opinion on the financial position and results of operations for the fiscal year.

Subsection 190 (2) of the Act requires the auditor to also prepare a supplement report that is to include:

- statement of opinion related to the internal controls of the municipality
- statement of opinion on compliance with legislation, and
- statement of findings and recommendations on any irregularities in the performance of duties and record keeping of municipal financial affairs that came to the auditor’s attention during the audit.

Subsections 191 and 192 of the Act enable the Minister to request further examination and submission of additional information or documents on the financial affairs of the municipality.

Subsection 193(1) of the Act requires the auditor to ensure that a copy of the audit report (audit opinion, audited financial statements and supplement report) is provided to the head of council and the minister.

Subsection 194 of the Act requires the municipality to give public notice of the audit report and municipality’s financial statement are available for public review. The audited financial statement ensures accountability and transparency and provides citizens with the opportunity to see the actual year-end financial results.

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(2) Appointing an Auditor - The Audit Proposal

In considering the appointment of an auditor, municipalities may wish to develop a Request for Proposal (RFP), to be responded to by potential auditors for audit services. A sample Audit Proposal is attached, as Appendix 1, which may be used as a checklist.

Municipalities may also wish to establish an audit committee to:

- define the scope of the audit
- consider the proposals received by potential auditors
- make recommendations to council about the auditor's appointment
- act as a liaison between the auditor and the municipality
- evaluate the performance of the auditors (pre- and post-appointment)
- follow-up on the auditor's recommendations

(3) Audit Proposal Review

A sample Audit Proposal Review is attached, as Appendix 2, to assist municipalities in their evaluation of an audit proposal received from a potential auditor.

The sample Audit Proposal Review sets out one way of evaluating audit proposals, however, municipalities should attach appropriate allocation of merit to the specific areas they feel are most important.

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 2 – Municipal Audits - Appointment, Proposal and Evaluation	
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Appendix 1 — Sample Audit Proposal

I. Information Provided by the Municipality

a) Request for Proposals

- Firms are responsible to ensure that their proposals are received by registered mail or secured email by the date specified by the municipality.
- Inquiries related to this request for proposal should be directed to the designated person (chief administrative officer, chief financial officer, audit committee chairperson).

b) Nature of Services Required

The municipality should request proposals from Chartered Professional Accountants authorized to perform an attest audit of its financial statements with the purpose of expressing an opinion on the fair presentation of its consolidated financial statements in accordance with Canadian Public Sector Accounting Standards.

To search for registered audit firms, municipalities may access the CPA Manitoba website at: <https://cpamb.ca/find-a-cpa>.

The audit shall be performed in accordance with Canadian Auditing Standards and in accordance with Part 6, Division 5 of The Municipal Act.

The municipality should identify any additional services such as presentations that may be required.

c) Description of Municipality and Records to be Audited

- Location of municipality and municipal office
- Organizational chart
- Listing of number and categories of employees
- Description of accounting system including software
- Accounting policies and procedures
- Copy of most recent audited and internal financial statements
- Copy of most recent budget
- Any other information materially relevant to a potential auditor (trust funds, Municipal Employees Benefits Program (MEBP) information, debenture schedules, commitments, reserves, utilities, segment information, collective agreement(s), Local Urban District(s))

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Description of Municipal Reporting Entities (MREs) and Government Partnerships (GPs) and Records to be Audited

- Location of organizations
- Organizational chart
- Description of accounting system including software
- Accounting policies and procedure
- Copy of most recent audited and internal financial statements
- Copy of most recent budget
- Any other information materially relevant to a potential auditor

e) Contracted Arrangement

The audit engagement is for a defined number of years as approved by council.

f) Report Presentation

Prior to the issuance of the audit opinion, audited financial statements and supplementary report, the reports are to be presented to council for acceptance by resolution. The Consolidated Statement of Financial Position is to be signed by council representatives.

II. Information Requested from the Auditor

The following represents the format in which all proposals must be submitted:

a) Title Page

A page showing the request for proposal subject, the name of the auditor's firm, its local address, the name and number of a contact person, the date and the name of the municipality.

b) Table of Contents

The table of contents should clearly identify what is included in the proposal, by section and by page number.

c) Letter of Introduction

A letter of introduction containing the name, address and telephone number of the firm and the individual authorized to represent and bind the firm to all commitments made in the firm's proposal, and an understanding of the work to be performed.

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The letter should include an affirmative statement indicating that the firm and all assigned key professional staff are properly registered to practise in Manitoba and meet the qualifications set out in subsection 184(5) of The Municipal Act. In addition, the audit firm is to provide background and experience in municipal audit.

d) Profile of the Firm

Give the number of partners, managers, supervisors, seniors and other professional staff employed.

Describe the range of activities performed such as audit, accounting, or management service and similar engagements with other public sector entities. Describe the firm's technological capacity.

Provide a disclosure of conflict of interest and independence.

e) Audit Partner, Supervisory Staff Qualifications and Experience

List the staff to be involved with the audit, specifying each individual's role and experience/qualifications. (Brief résumés for each senior person assigned to the audit should be included in an appendix).

f) Audit Methodology

Provide a description of the firm's approach to the performance of the attest audit, including planning, assessing risk, testing accounts and transactions, evaluating internal controls, reporting and providing an audit opinion and compliance to legislation. This description should also encompass the extent and timing of the audit plan that would include but not limited to:

- determining materiality
- sampling procedures
- perform analytical review
- use of municipal accounting software
- testing compliance audit
- time allocation for interim and year end audit field work

g) Audit Fee

Based on the value for money service approach and nature of engagement the audit firm will determine the estimated maximum fees and other out-of-pocket costs.

Fees may or may not include audit cost for municipal reporting entities (MREs) and government partnerships (GPs).

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h) Additional Data

Provide any additional information considered essential to this proposal. If there is no additional information to present, state in this section, “There is no additional information we wish to present.”

III. Evaluation Procedure

- a) The council or audit committee should evaluate the proposals received based on the criteria set out in the RFP and apply equitably to all proposals.
- b) The council has sole authority to make the appointment. Contract is awarded by resolution to the audit firm whose proposal is determined to be the most advantageous to the municipality based on the evaluation.

Note: The municipality is not required to award the RFP, for example if all the proposals are too high or if no one met the municipality’s procurement criteria.

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Appendix 2 — Sample Audit Proposal Review

<u>Experience</u>	<u>Points</u>
Experience in Auditing:	
* Like size municipalities for 10 years or more	20
* Like size municipalities for 5 to 10 years	18
* Gov't./non-profit for 10 years or more	17
* Gov't./non-profit for 5 to 10 years	15
* Large private sector for 5 to 10 years	12
* Smaller municipalities for 5 to 10 years	10
* Small audits for 5 to 10 years	5
Engagement Partner 60% of x points and Audit Supervisor 40% of x points.	
<u>Qualifications</u>	
Depth of Resources:	
* National accounting firm	5
* Regional accounting firm	4
* Large single office firm	3
* Small single office firm	2
Accounting designation:	
* Engagement partner and audit supervisor	5
* Engagement partner only	3
* Audit supervisor only 1	
<u>Proposed Audit Methodology</u>	
Overall Presentation of Proposal:	
* Proposal is clear and concise, well put together, includes schedules and provides all information requested in the RFP.	8
* Proposal is well put together and provides information requested in the RFP but leaves items open to interpretation.	6
* Proposal provides information requested in the RFP but leaves items open to interpretation.	3
Technical Merit:	
* Audit approach is very detailed and logical.	8
* Audit approach is reasonably detailed and logical.	6
* Audit approach is vague but logical.	4
* Audit approach is vague and not logical.	2
Technological Skills:	
* Engagement partner and/or field supervisor have expertise in the municipal accounting software.	2

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Outstanding Issues:

- * The proposal is firm and makes no reference to outstanding items that might affect the audit fee in future.

3

Audit Fee:

- * Most economical bid gets 50 points, with a maximum difference of 10 points [(spread to be $50 \div (\# \text{ of bids } -1)$)]
-

SUMMARY OF POINTS

Experience:

Engagement Partner 60%
Audit Supervisor 40%

Qualifications:

Depth of Resources
Accounting Designation

Proposed Audit Methodology:

Overall Presentation of Proposal
Technical Merit
Technological Skills
Outstanding Issues

SUB-TOTAL: _____

AUDIT FEE: _____

TOTAL: _____

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Subject: 3 – Approvals of Deficits and Transfers	
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6.3 Approvals of Deficits and Transfers

(1) Legal Requirements

General Operating Fund Deficits

Subsection 164(3) of The Municipal Act (the Act) requires councils to obtain written approval of the Minister for all budgeted deficits in the General Operating Fund. These budgeted deficits will occur when total estimated expenditures exceed total estimated revenues and transfers in the annual budget of the General Operating Fund.

Subsection 165(1) of the Act requires councils to obtain written approval of the Minister for all anticipated deficits in the General Operating Fund. Municipalities should review their revenues and expenditure prior to year end to determine if a deficit is anticipated. A deficit occurs when expenditures exceed revenues and transfers of the General Operating Fund.

Utility Operating Fund Deficits

Subsection 164(4) of the Act requires councils to obtain approval of The Public Utilities Board for all budgeted deficits in the Utility Operating Fund.

Subsection 165(2) of the Act requires councils to obtain approval of The Public Utilities Board for all actual deficits in the Utility Operating Fund.

Transfers from Reserves and Surplus

The Accumulated Surplus and General Reserve Regulation (Regulation 49/97) establishes limitations on amounts which may be transferred from accumulated surplus or general reserves without approval from the Minister.

Subsection 164(5) of the Act requires councils to obtain approval for any transfers that exceed the maximum amount set out in the Regulation. Municipalities are required to maintain a balance in the accumulated surplus and general reserve fund (combined) equal to or greater than 20% of the prior years' expenditure.

A proposed transfer that does not meet the 20% threshold would require the Minister's approval. To assist municipalities in applying the formula to a proposed transfer, three examples applying the Regulation's formula are provided in Appendix 1.

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(2) Approval Procedures

Ministerial Approvals

Requests for approval under subsections 164(3) (budgeted deficits) and 164(5) (transfers in excess of limitations) should be directed to:

Minister of Municipal Relations
c/o Designate
Municipal Governance and Advisory Services
508 - 800 Portage Avenue
Winnipeg, Manitoba R3G 0N4
or
Email: mrmaas@gov.mb.ca

Requests for approval under subsection 165(1) of the Act (anticipated deficits) should be submitted to:

Manitoba Municipalities Online (MMO) under Submit/View Municipal Report – Municipal report – unaudited financial statement – gen op fund deficit letter. A sample General Operating Deficit Recovery letter is provided in Appendix 2.

Public Utilities Board Approvals

Applications for approval under subsections 164(4) (budgeted deficits) and 165(2) (actual deficits) of the Act should be directed to:

The Public Utilities Board
400 - 330 Portage Avenue
Winnipeg, Manitoba R3C 0C4
or
Email: publicutilities@gov.mb.ca

The Deficit Application Form and deficit information can be found on the Public Utilities Board website at <http://www.pubmanitoba.ca/v1/regulated-utilities/w-ww/utilities/utilities.html>

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Subject: 3 – Approvals of Deficits and Transfers	
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(3) Options for Recovery or Restoration

Options a council may consider for recovery of an operating deficit include:

a) General Operating Fund

- recovery by transfer from accumulated surplus;
- recovery by transfer from general reserve fund;
- recovery by transfer from specific reserve fund;
- recovery by levy in one or more future years;
- recovery from identified revenue sources in the succeeding year's financial plan; or
- recovery by combination of any of the above.

The method of recovery of a general operating fund deficit must be stated in the deficit recovery letter and accompanied by a council resolution and is subject to the Minister's approval.

Note: All recoveries are to be reported in the following years' Financial Plan.

b) Utility Operating Fund

- recovery by transfer from utility accumulated surplus;
- recovery by rate rider (future years);
- recovery by transfer from utility reserve fund;
- recovery by transfer from general reserve fund;
- recovery by other method; or
- recovery by combination of any of the above.

The method of recovery of a utility deficit must be stated on the deficit application and accompanied by a council resolution and is subject to the Public Utilities Board approval.

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Appendix 1 - Accumulated Surplus and General Reserve Regulation (49/97)

Formula:

$$AS + GRF - T \geq 20\% \text{ of } E$$

In this formula,

- AS - the amount of the accumulated surplus reported at the end of the previous fiscal year;
- GRF - the amount of money in the general reserve fund;
- T - the amount of the proposed transfer;
- ≥ - greater than or equal to;
- E - the total of all expenditures at the end of the previous fiscal year excluding the amount for education requisitions in accordance with clause 164(1)(c) of The Municipal Act.

Example 1 – Municipality A proposes an expenditure of \$200,000 to be covered by a transfer from accumulated surplus or general reserve funds in their current financial plan.

Details from previous years' audited financial statement	
Accumulated Surplus (from notes)	\$ 184,886
General Reserve (schedule 6)	\$1,196,216
Total Acc. Surplus and General Reserve	\$1,381,102
Previous years' general operating expenditures	\$7,420,285
20% of Expenditures	\$1,484,057
Regulation 49/97 Threshold met	No
Maximum Transfer (1,381,102 – 1,484,057)	(\$102,955)

Under this example, Municipality A's "maximum transfer" amount is negative. The municipality cannot transfer from accumulated surplus or general reserves without Ministerial approval for this transfer prior to the adoption of the financial plan.

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PART: 6 – FINANCIAL ADMINISTRATION

Subject: 3 – Approvals of Deficits and Transfers

Page: 6.3.5

Date Issued: April 2022

New:

Amendment:

Example 2 – Municipality B proposes an expenditure of \$200,000 to be covered by a transfer from accumulated surplus or general reserve funds in their current financial plan.

Details from previous years' audited financial statements	
Accumulated Surplus (from notes)	\$ 134,551
General Reserve (schedule 6)	\$ 199,328
Total Acc. Surplus and General Reserve Fund	\$ 333,879
Previous years' expenditures	\$1,597,730
20% of Expenditures	\$ 319,546
Regulation 49/97 Threshold met	Yes
Maximum Transfer (333,879 – 319,546)	\$ 14,333

Under this example, Municipality B meets the threshold however the maximum transfer is \$14,333. If Municipality B wishes to transfer the proposed \$200,000, Ministerial approval for \$185,667 is required prior to the adoption of the financial plan (\$200,000-\$14,333).

Example 3 – Municipality C proposes an expenditure of \$200,000 to be covered by a transfer from accumulated surplus or general reserve funds in their current financial plan.

Details from previous years' audited financial statements	
Accumulated Surplus (from notes)	\$ 650,555
General Reserve (schedule 6)	\$ 202,640
Total Acc. Surplus and General Reserve Fund	\$ 853,195
Previous years' Expenditures	\$2,506,435
20% of Expenditures	\$ 501,287
Regulation 49/97 Threshold met	Yes
Maximum Transfer (853,195 – 501,287)	\$ 351,908

Under this example, Municipality C meets the threshold and may transfer the proposed \$200,000. No Ministerial approval is required.

For expenditures not included in the adopted financial plan (general operating and capital budgets) council may consider a transfer from accumulated surplus and/or general reserve fund. Subsection 169(5) allows council to cover this expenditure by transfer from accumulated surplus and/or general reserve fund that are within limits established by Regulation 49/97. This situation is covered more in depth in Part 6 -The Financial Plan.

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 3 – Approvals of Deficits and Transfers	
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Appendix 2 – Sample General Operating Deficit Recovery Letter

Minister of Municipal Relations
c/o Designate
Municipal Assessment and Advisory Services
500-800 Portage Avenue
Winnipeg, MB
R3G 0N4

Re: Municipal Name 20XX General Operating Deficit

Dear

The Municipal Name incurred a general operating deficit for the year 20xx in the amount of \$xx.

The operating deficit was incurred due to... state cause(s) of deficit...

The Council of Municipality Name requests approval to recover the deficit... state method of recovery... Please find attached resolution no. xx to this effect (attached resolution).

Yours truly,

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 4 – Municipal Act Checklist	
Page: 6.4.1	Date Issued: February 2003
New: <input checked="" type="checkbox"/>	Amendment:

6.4 Municipal Act Checklist

(1) Administrative and Financial Checklist

To assist council and staff to become familiar with the numerous provisions that apply to day to day municipal operations, a checklist has been developed listing many requirements specified under *The Municipal Act*. Municipal staff should refer to this checklist frequently during the year to ensure compliance with the requirements for council, financial responsibilities and administrative obligations of the municipality.

The checklist is attached as “**Appendix 1**” to permit ease of distribution and use by elected officials and municipal staff. Users of this checklist should be cautioned that there are additional provisions that have not been included in the list. *The Municipal Act* should always be the primary reference.

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PART: 6 – FINANCIAL ADMINISTRATION

Subject: 4 – Municipal Act Checklist

Page: 6.4.2

Date Issued: February 2003

New:

Amendment:

Appendix 1 – Administrative and Financial Checklist

PART 1 - ROLE & RESPONSIBILITIES OF COUNCIL	Municipal Act Section	Yes or No or N/A
1.1 - Organization:		
<i>Has the organizational structure for the municipality been established by by-law? Has the by-law been reviewed during council's term of office?</i>	148(1)	
<i>Have the rules of procedure been established by by-law? Has the by-law been reviewed during council's term of office?</i>	149(1)	
<i>Are all by-laws properly authorized?</i>	145	
1.2 - Remuneration of council:		
<i>Is remuneration of council established by by-law?</i>	124(2)	
<i>Do the annual financial statements disclose the amount of compensation to council?</i>	124(4)	
PART 2 - MUNICIPAL ORGANIZATION & ADMINISTRATION		
2.1 - Chief Administrative Officer:		
<i>Has the position of Chief Administrative Officer been established by by-law and has an appointment to the position been made?</i>	125(1)	
2.2. - Municipal Employee Benefits (Pension)		
<i>Does the municipality have a pension plan for employees?</i>	406(2)	
PART 3 - FINANCE		
3.1 - Investments		
<i>Are investments authorized?</i>	181(2)	
3.2 - Authority Required for Expenditures:		
<i>Has an interim operating budget been adopted by resolution?</i>	163	
3.3 - General Fund Expenditures:		
<i>Are all expenditures authorized?</i>	169(1)(2)	
<i>Are all reserve funds established by by-law?</i>	168(1)	
<i>Has council held a public hearing to authorize expenditures exceeding the operating or capital budgets that are to be financed from surplus, reserves or borrowing?</i>	169(5)(6)	
<i>Has council authorized borrowing for operating expenses during a fiscal year?</i>	173(1)	
<i>Has Municipal Board approval been obtained for borrowing by-laws?</i>	176	
<i>Are grant recipients authorized?</i>	344	
<i>Has The Municipal Board approved all local improvement and special service by-laws?</i>	320(4)	
<i>Are discounts for prepayment of taxes authorized by by-law?</i>	344	

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PART: 6 – FINANCIAL ADMINISTRATION

Subject: 4 – Municipal Act Checklist

Page: 6.4.3

Date Issued: February 2003

New: √

Amendment:

Appendix 1 cont'd

PART 3 - FINANCE (Cont'd)	Municipal Act Section	Yes or No or N/A
3.4 - Utility Fund:		
<i>Has council obtained the approval of The Public Utilities Board for any anticipated deficit in the utility budget?</i>	165(2)	
<i>Has The Public Utilities Board approval for a budgeted utility deficit been obtained prior to adopting the utility budget?</i>	164(4)	
3.5 - Local Urban District:		
<i>Are local urban district expenditures within the appropriate jurisdiction?</i>	118(1)	
<i>Has the municipality properly accounted for insufficient or excess local urban district levies?</i>	120(2)(3)	
3.6 - The Financial Plan - Operating and Capital Budgets:		
<i>Has an interim operating budget been adopted by resolution?</i>	163	
<i>Has the Minister's written approval for a budgeted deficit been obtained prior to adopting the operating budget?</i>	164(3)	
<i>Has the Minister's written approval been obtained prior to adopting a financial plan which includes a transfer of an amount from surplus or reserves that exceeds the maximum amount provided for by regulation?</i>	164(5)	
<i>Has council obtained the approval of the Minister for any anticipated deficit in the budget?</i>	165(1)	
3.7 - Presenting the Financial Plan to the Public:		
<i>Has a public hearing been held prior to the adoption of the financial plan?</i>	162(2)	
<i>Was a second public hearing required for revisions to the financial plan that resulted in an increase in tax rates, transfers or the amounts in the capital plan?</i>	162(3)	
3.8 - Filing of Financial Plan:		
<i>Has a copy of the financial plan been filed with the Minister by May 15th?</i>	162(4)	
<i>Has the Minister's written approval been obtained to extend the deadline for filing of the financial plan?</i>	162(5)	
PART 4 - TAX LEVY		
<i>Has the annual tax levy by-law been adopted by May 15th?</i>	304(1)	
<i>Has a copy of the annual tax levy by-law been filed with the Minister by June 15th?</i>	304(2)	
<i>Are penalties in respect of tax arrears authorized by by-law?</i>	346	
<i>Were tax notices prepared for all properties and businesses on the tax roll and mailed by August 31st?</i>	302(1)	

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Appendix 1 cont'd

PART 5 - FINANCIAL REPORTING	Municipal Act Section	Yes or No or N/A
5.1 - Filing Financial Report:		
<i>Has the municipality submitted to the Minister its annual financial statement for the preceding year by March 15th?</i>	183(2)	
5.2 - Auditor:		
<i>Has council appointed an auditor for the fiscal year by August 31st?</i>	184(1)	
<i>Has council informed the Minister of the name of the auditor for the fiscal year by October 10th?</i>	184(3)	
<i>Has council taken actions necessary or advisable to address matters indicated in an auditor's report that require immediate action?</i>	196(1)(a)	
<i>Has council advised the Minister of the action taken regarding the matters reported in the audit report?</i>	196(1)(b)	

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 5 – Education Requisitions	
Page: 6.5.1	Date Issued: January 2017
New:	Amendment: √

6.5 Education Requisitions

(1) Legal Requirements

Sections 184 and 188 of *The Public Schools Act* state that municipalities must impose and remit taxes sufficient to raise amounts apportioned to the municipality with respect to the Provincial Education Support Levy (ESL) and School Division Special Levies. Annually the municipality will receive:

- (a) A Notice of ESL Tax Requirements from The Public Schools Finance Board not later than March 15th ; and
- (b) A Notice of Special Levy Tax Requirements from the School Division(s) not later than March 15th.

Municipalities must include and levy for the education requirements in the Annual Financial Plan but, because these amounts are established by the Public Schools Finance Board and the School Division(s) respectively, are not required to include them in the presentation at the Financial Plan public hearing. The municipality may therefore hold the public hearing for the Financial Plan as required by s. 162(2) of *The Municipal Act* prior to receiving the final amounts of the education requirements.

(2) Calculation of Education Levies

Education levies are based on Total Portioned School Assessment and include Converted Assessments that are not a part of the Portioned Education Assessments as reported in the Detailed Budget Recap Report and provided to municipalities by Municipal Relations, Information Systems Branch. For this reason, if your municipality charges and/or receives one or more of the following:

- a) fees for mobile homes based on a municipal licensing by-law;
- b) lease payments for hay and grazing leases on Crown land;
- c) fees from the Greater Winnipeg Water Distribution System;
- d) Manitoba Hydro fixed grants (only some of the Manitoba Hydro fixed grants apply);

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 5 – Education Requisitions	
Page: 6.5.2	Date Issued: April 2005
New:	Amendment: √

The amount raised by applying the mill rates provided by the education authorities to your education assessments (as provided in your ‘Detailed Budget Recap Report’) will be less than is required to be remitted to those education authorities. Adjustments must be made by the municipality to correctly levy for school taxes in these situations.

The following outline sets out the procedure to include the education requirements and calculate the education tax levies in the Annual Financial Plan, making the necessary adjustment for converted assessments.

Refer to Appendix 1 (Page 6.6.3 – 6.6.5) – “Page 8 of the Financial Plan” and Appendix 2 – “Detailed Budget Recap” and follow the steps listed below.

1. On page 8 of the Financial Plan insert the assessments for all education requirements (ESL, Special Levies) as reported on your ‘Detailed Budget Recap Report’.
 - (a) ESL Assessments:
 - (i) ESL – Residential: comprised of Classes 10, 20, and 80 (*Ref. ^(a) Appendix 1*)
 - (ii) ESL – Other: comprised of Classes 40, 41, 51, 52, 60, and 70 (*Ref. ^(b) Appendix 1*)
 - (b) Special Levies Assessments:
 - (i) Division # (*note: your municipality may have more than one school division within its boundaries*) (*Ref. ^(c) Appendix 1*)
2. Enter all education requirements for the year in the ‘Basic’ Expenditure column on Page 8 of the Financial Plan.
 - (a) Public Schools Finance Board
 - (i) ESL – Other (*Ref. ^(d) Appendix 1*)
 - (ii) ESL – Other (*Ref. ^(e) Appendix 1*)
 - (b) Local school board(s) Special Levy (*Ref. ^(f) Appendix 1*)

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 5 – Education Requisitions	
Page: 6.5.3	Date Issued: January 2017
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Enter the Mill Rates in the ‘Mill Rate’ column on Page 8 of the Financial Plan:

- (a) ESL – Residential (*Ref. ^(g) Appendix 1*); and
ESL – Other (*Ref. ^(h) Appendix 1*):
(Mill rates will be specified in the Notice of Tax Requirement submitted by the Public Schools Finance Board. Enter the mill rate exactly as provided on the Notice and do not round it up or down).
 - (b) Special Levies (*Ref. ⁽ⁱ⁾ Appendix 1*):
Mill rates may be included in the Notice of Tax Requirement submitted by the School Division. The municipality may request additional information from the School Division in order to calculate the Mill Rate based upon your municipality’s pro rata share of Total School Assessment.
3. Calculate the amount of ‘Revenue’ from taxable and grant property for the year by multiplying the related assessment times the mill rate (*as provided by the Public School Finance Board for the ESL and as calculated for the School Division(s)*) and enter in the appropriate ‘Taxable’ and ‘Grant’ revenue columns. (*Ref. ^(j) Appendix 1*).
 4. Enter the difference between the revenue generated from the taxable and grant property (‘Taxable’ revenue + ‘Grant’ revenue) and the ‘Basic’ Requirement in the ‘Other’ revenue column. (You will do this for each education levy requirement (*Ref. ^(k) Appendix 1*)). These ‘Other’ revenue amounts reflect the revenue generated by the converted assessments in your municipality.
 5. Use the Property Tax Mill Rates worksheet on MMO to review your calculations.

(3) Remitting the Education Levy Requisitions:

Provincial Education Support Levy:

Municipalities are required to remit the total amount of the Education Support Levy (ESL) as provided to the municipality by the Public Schools Finance Board (PSFB) and included in the annual Financial Plan. This ESL Levy remittance is made payable to the Province of Manitoba - PSFB and forwarded to: Education, and Training, 511-1181 Portage Avenue, Winnipeg, Manitoba R3G 0T3.

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Subject: 5 – Education Requisitions	
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New:	Amendment: √

School Division Special Levy(s):

Municipalities are required to remit to School Divisions the amount of the total Special Levy requisitions as provided to the municipality by the School Division and included in the annual Financial Plan **less** the Education Property Tax Credit Homeowner Advance applicable to that Special Levy. (Refer to Section 6.6 of this Manual for a detailed explanation of how the EPTC is applied to residential property taxes).

Dates for Remittance of Education Requisitions:

Education levy remittances are made in accordance with the Education Support Levy and Special Levy Regulation 371/88 as follows:

1. Levies collected on or before the due date: remit on or before the end of the month following the month in which the taxes were due or within 31 days of the due date, whichever comes first. (Example – when taxes are due October 31st, pay, no later than November 30th, the portion of the education levy collected to October 31st).
2. Levies collected after due date: remit on or before the end of the month following the month in which the taxes were paid. (Example – when taxes are due October 31st, but paid in the month of November, the municipality remits, no later than December 31st, the portion of the education levy collected in November).
3. The balance is to be remitted on or before January 31st, of the succeeding year whether or not the ratepayer has remitted them.

Education Tax Remittance Forms:

Education Tax remittance forms are provided to municipalities by Education and Training, and must be used for calculating and submitting education requirements. These forms are available on the Education and Training website at <http://www.edu.gov.mb.ca>.

Municipal Act Procedures Manual

PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 6 – Education Property Tax Credit Homeowner Advance	
Page: 6.6.1	Date Issued: April 2005
New: <input checked="" type="checkbox"/>	Amendment:

6.6 Education Property Tax Credit Homeowner Advance

(1) Program

- Effective for the 2005 tax year, the Resident Homeowner Advance portion of the Manitoba Education Property Tax Credit (EPTC) will be provided directly to School Divisions as revenue from the Province of Manitoba. This will more accurately reflect the amount of provincial funding provided in support of education.
- The Resident Homeowner Advance portion of EPTC provided to resident taxpayers on their property tax bill will be applied first to the School Division Special Levy, second to the residential Education Support Levy (if any unused credit remains), and any remaining balance to the Municipal Levy.

(2) Municipal Procedures for EPTC and Education Requirements

The Annual Financial Plan:

Municipalities must include in the Annual Financial Plan the total education requirement amounts as provided by the School Division(s) and the Public Schools Finance Board and calculate the applicable education tax levies. Section 6.5.(2) of this manual provides a detailed outline of the procedure to include the education requirements and calculate the education levies in the financial plan.

EPTC and the Property Tax Statements:

The total amount of Resident Homeowner Advance portion of EPTC provided to each individual taxpayer is identified on their property tax statement and shown as Manitoba Education Property Tax Credit Advance. On the property tax statement, the EPTC is applied first to the Special Levy, second to the residential Education Support Levy, and any remaining balance to the Municipal Levy.

Municipal Act Procedures Manual

PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 6 – Education Property Tax Credit Homeowner Advance	
Page: 6.6.2	Date Issued: January 2017
New:	Amendment: √

Journal Entry to record EPTC:

When recording the journal entries for the Financial Plan, the entry to record the Account Receivable from the Province of Manitoba for EPTC, and the Account Payable to School Division(s) will be reduced by the amount of the EPTC paid directly to the School Division(s) by the Province. (*Refer to Appendix 3 for example journal entries*).

Payment to Municipalities from the Province of Manitoba for EPTC:

Manitoba Finance will forward payment to the municipality for the portion of EPTC applicable to the ESL and the municipal levy. These payments are issued after a municipality's tax statements have been printed. The portion applicable to the School Division Special Levy(s) is paid directly to the School Division(s).

Remitting the Education Levy Requirements:

The municipality is required to remit to the School Division(s) the amount of the Special Levy requirement **less** the Education Property Tax Credit Homeowner Advance applicable to the Special Levy(s).

The municipality is required to remit to the Public Schools Finance Board the total amount of the ESL requirement as provided to them by the Public Schools Finance Board. (Any EPTC applicable to the ESL Levy is paid directly to the municipality by the Minister of Finance).

Refer to Part 6.5(3) of this manual – “Remitting the Education Levy Requisitions” for details regarding the payment of education requirements.

New EPTC Applications:

Resident homeowners who qualify for the EPTC and who did not receive the credit on their property tax statement may submit an application through the municipality to the Manitoba Tax Assistance Office. Manitoba Finance will forward all of the approved “in-year” application payments to the municipality.

APPENDIX 2

MUNICIPALITY

**MUNICIPAL RELATIONS - ASSESSMENT
DETAILED BUDGET RECAP REPORT
PORTIONED ASSESSMENTS
FOR 2016**

REPORT NAME: RTP 15
RUN: FEB 08 200410:01

ROLL VERSION - CURRENT

-----PROPERTY CLASSES-----

	CLASS 10	CLASS 20	CLASS 30	CLASS 40	CLASS 41	CLASS 51	CLASS 52	CLASS 60	CLASS 70	CLASS 80 /TOTAL
SCHOOL ASSESSMENT PROV EDUC DIVISION/DISTRICT										
TAXABLE (T)										
NL	358,710							8,070		366,780
32	7,206,130			9,110				1,115,870		8,331,110
34	41,150									41,150
48	47,220									47,220
TOTAL	7,653,210			9,110				1,123,940		8,786,220
GRANTS IN LIEU (G)										
NL	609,650							1,760		611,410
32	622,190	144,780						240,690		1,007,660
34	20,080									20,080
48	20,880							130		21,010
TOTAL	1,272,800	144,780						242,580		1,660,160
GRAND	8,926,010	144,780		9,110				1,366,520		10,446,420

-----PROPERTY CLASSES-----

	CLASS 10	CLASS 20	CLASS 30	CLASS 40	CLASS 41	CLASS 51	CLASS 52	CLASS 60	CLASS 70	CLASS 80 /TOTAL
SCHOOL ASSESSMENT PROV EDUC DIVISION/DISTRICT										
TAXABLE (T)										
32	7,206,130		6,548,290	9,110				1,115,870		14,879,400
34	41,150		28,820							69,970
48	47,220		111,870							159,090
TOTAL	7,294,500		6,688,980	9,110				1,115,870		15,108,460

APPENDIX 2

MUNICIPALITY

**MANITOBA – MUNICIPAL RELATIONS – ASSESSMENT
DETAILED BUDGET RECAP REPORT PORTIONED
ASSESSMENTS FOR 2004**

REPORT NAME: RTP 15
RUN: FEB 08 200410:01

ROLL VERSION - CURRENT

-----PROPERTY CLASSES-----										
	CLASS 10	CLASS 20	CLASS 30	CLASS 40	CLASS 41	CLASS 51	CLASS 52	CLASS 60	CLASS 70	CLASS 80 /TOTAL
SCHOOL ASSESSMENT SCHOOL DIVISION/DISTRICT										
GRANTS IN LIEU (G)										
32	622,190	144,780	2,167,460					240,690		3,175,120
34	20,080									20,080
48	20,880		144,500					130		165,510
TOTAL	663,150	144,780	2,311,960					240,820		3,360,710
GRAND	7,957,650	144,780	9,000,940	9,110				1,356,690		18,469,170
-----PROPERTY CLASSES-----										
	CLASS 10	CLASS 20	CLASS 30	CLASS 40	CLASS 41	CLASS 51	CLASS 52	CLASS 60	CLASS 70	CLASS 80 /TOTAL
HOSPITAL ASSESSMENT										
TAXABLE (TS)										
NIL	2,550,120		1,584,950	1,950				123,220		4,260,240
56	3,440,710		2,981,240	790				358,100		6,780,840
71	1,502,820		1,623,480	7,090				642,620		3,776,010
9	159,560		500,040							659,600
TOTAL	7,653,210		6,689,720	9,830				1,123,940		15,476,690
GRANTS IN LIEU (G/N)										
NIL	759,170	77,720	796,700					5,280		1,638,870
56	227,000		1,235,660					70,360		1,533,020
71	270,510	67,060	2,100					166,490		506,610
9	16,120		290,730							306,850
TOTAL	1,272,800	144,780	2,325,190					242,580		3,985,350

Municipal Act Procedures Manual

PART: 6 – FINANCIAL ADMINISTRATION

Subject: 6 – Education Property Tax Credit Homeowner Advance

Page: 6.6.6

Date Issued: January 2017

New:

Amendment: √

Appendix 3 – Example Journal Entries

Education requisitions are included in the Annual Financial Plan as follows - Appendix 1:

ESL	\$ 83,123.00 (Ref. (d) and (e) Appendix 1)
Special SD #92	\$ 511,021.00 (Ref. (f) Appendix 1)
Special SD #91	\$ 3,081.00 (Ref. (f) Appendix 1)
Special SD #93	\$ 18,541.00 (Ref. (f) Appendix 1)
Total Requisitions	\$ 615,766.00

Information Systems Branch has provided the municipality with the report reflecting the application of EPTC as follows:

Special SD #92	\$ 73,500.00 *
Special SD #91	\$ 500.00 *
Special SD #93	\$ 2,400.00 *
ESL	\$ 5,000.00 **
Municipal	\$ 3,000.00 **
Total EPTC	\$ 84,400.00
* Paid directly to school divisions	
** Paid directly to municipalities	

Journal entries required to record the Annual Financial Plan into the general ledger:

Date	GIL Account	Debit \$	Credit \$	Particulars
June 10/04	A/R – Taxes on Roll	842,036.31		Total tax +GIL levy (ref. (n) & ref. (o)) less total EPTC
	A/R - Prov. Of MB – EPTC	8,000.00		EPTC payable to municipalities
	A/P – PSFB – ESL Levy		83,123.00	Requisition
	A/P - SD #92 Special Levy		437,521.00	Requisition less EPTC
	A/P - SD #91 Special Levy		2,581.00	Requisition less EPTC
	A/P – S/D #93 Special Levy		16,141.00	Requisition less EPTC
	Municipal tax and grant in lieu of revenue		310,670.31	Total tax + total GIL revenue (ref. (n) & ref. (o)) less total requisitions

Municipal Act Procedures Manual

PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 7 – Public Notice of Proposed Borrowing for Capital Projects	
Page: 6.7.1	Date Issued: October 2012
New: <input checked="" type="checkbox"/>	Amendment: <input type="checkbox"/>

6.7 Public Notice of Proposed Borrowing for Capital Projects

(1) Legal Requirements

Municipalities are increasingly planning for and undertaking large, expensive capital projects. The magnitude and costs of these projects usually generate public interest. Citizens need to understand what Council is proposing, why, and how the financing of the project will affect them.

Borrowing is an increasingly important source of financing for large capital projects. Long-term borrowing enables a municipality to pay for capital projects (facilities and equipment) over a period of years, often matching the term of the borrowing with the estimated useful life of the capital asset. In this way those who benefit from the capital asset are the ones who pay for it.

Section 172 of *The Municipal Act* sets out council's authority to borrow money to pay for a capital project, refinance an existing debt, pay for a local improvement project, purchase capital equipment, and lease property or capital equipment with a fixed term over three years. A borrowing is authorized by a by-law and must be approved by the Municipal Board.

Section 174.1(1) requires the municipality to give public notice before giving first reading to a borrowing by-law. This ensures citizens have information about proposed projects and can voice any concerns before projects move forward. Section 174.1(2) specifies the information that must be included in the public notice.

Public notice is required for all capital projects, except those funded as local improvements which already require a public consultation process. (Note: refer to Part 10 of The Procedures Manual for the process to implement a local improvement.)

(2) Public Notice Requirements

Capital projects include sewer and water projects, municipal buildings, roads, equipment purchases and any other project that includes a capital component. These projects are expensive and can have significant impact on taxes. Therefore, it is expected that municipalities have undertaken appropriate due diligence and have discussed proposed capital projects with citizens before the required borrowing process begins. The municipal website and inserts with water bills are both excellent ways of communicating preliminary information about proposed capital projects with citizens.

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 7 – Public Notice of Proposed Borrowing for Capital Projects	
Page: 6.7.2	Date Issued: October 2012
New: <input checked="" type="checkbox"/>	Amendment:

If the municipality intends to pay for all or part of the capital project through borrowing, public notice must be given before Council gives the borrowing by-law first reading. This ensures taxpayers have a final opportunity to review, consider and share their views with council before the borrowing by-law is adopted.

Public notice before first reading of a proposed borrowing by-law is required regardless of whether the borrowing was included in the financial plan and presented at the financial plan public hearing.

3) Method of Public Notice

Public notice for a borrowing must be provided in accordance with Subsection 420(3) by:

- publishing the notice at least once in a publication having general circulation in the municipality, at least seven days before the proposed action; and
- posting the notice in the municipal office for at least 14 days.

These are minimum public notice requirements. Municipalities can give additional public notice in other ways, such as by posting the notice on the municipality's website.

4) Content of the Public Notice

Providing sufficient information in the notice will help citizens to decide whether they want to attend the meeting to ask questions or to make representations in regards to the borrowing proposal.

Subsection 174.1(2) requires the public notice to include:

- the date, time, and location of the council meeting at which the borrowing by-law will be considered for first reading.
- a general description of the capital project that is to be funded by borrowing
- an estimate of the total cost of the project
- a statement of the amount of the other sources of funding, if any, to be used to pay for the project, and the amount of funding to be provided from each of those sources
- the anticipated maximum rate of interest and the term and the terms of repayment of the borrowing
- the estimated rate of taxation necessary to repay the borrowing.

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 7 – Public Notice of Proposed Borrowing for Capital Projects	
Page: 6.7.3	Date Issued: January 2017
New:	Amendment: ✓

In addition to the notice, the municipality must ensure that a copy of the borrowing by-law is available for the public to examine at the municipal office during regular business hours. Many municipalities also post this information on their website.

A sample notice is attached as Appendix 1.

(5) General Borrowing By-law Process

Appendix 2 sets out the process for implementing a general borrowing by-law. Municipal Finance Officers from Municipal Relations are available to assist municipalities in preparing their documents. The general borrowing process includes:

Step 1 – Development of Proposed General Borrowing By-law

Borrowing by-laws must be approved by The Municipal Board before a project that involves borrowing begins. Therefore, it is important to begin developing a proposed general borrowing by-law well in advance (at least two months) of the anticipated project start date.

The borrowing by-law must include detailed information on the capital project, including a complete description of the project, the cost, indicating that all taxable properties are affected and that the annual payment will be calculated on the taxable assessed value of the whole municipality ('at large').

Step 2 - Notice of the General Borrowing By-law to pay for a Capital Project

Public notice for a borrowing must be provided before Council proceeds with first reading of the general borrowing by-law.

Step 3 - The Council Meeting to give first reading to the by-law

The council meeting will be conducted in accordance with the procedure established in your municipality's procedural by-law (Refer to Part 5.4, "Procedures By-law"). If Council deems the borrowing to be in the best interest of the municipality, Council will, by resolution, give first reading to the borrowing by-law.

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Subject: 7 – Public Notice of Proposed Borrowing for Capital Projects	
Page: 6.7.4	Date Issued: January 2017
New:	Amendment: ✓

Step 4 - Action by Council after giving first reading to the by-law

The original and three certified copies of the borrowing by-law to pay for a capital project, the Application for By-law Approval and a Statutory Declaration is submitted to:

Municipal Finance Officer
Municipal Finance and Advisory Services
Municipal Relations
508 – 800 Portage Avenue
Winnipeg, Manitoba R3G 0N4
Phone: 204-945-2575 Fax: 204-948-2780

Note: Samples of the Borrowing By-law, Application for By-law Approval and the Statutory Declaration are available from the municipal finance officer.

Step 5 –Municipal Finance Officer review and submission to Municipal Board

The municipal finance officer will review the documents before they are submitted to The Municipal Board, to ensure that all relevant documentation has been prepared, proper notice has been given, and all the necessary information was included in the notice. The municipal finance officer will contact the municipality if there are any questions or concerns about the by-law.

Following the review, the municipal finance officer will submit the municipality's by-law to The Municipal Board on behalf of the municipality. The municipal finance officer will also advise The Municipal Board if there are any issues or concerns in regard to the by-law and proposal.

Step 6 – The Municipal Board

The Municipal Board must consider every by-law and, by written order, approve the by-law, refuse to approve the by-law or require that the by-law be amended. Under section 176, council may give third reading to a by-law only as approved by the Board

**Municipal Act
Procedures Manual**

PART: 6 – FINANCIAL ADMINISTRATION

**Subject: 7 – Public Notice of Proposed Borrowing for
Capital Projects**

Page: 6.7.5

Date Issued: October 2012

New:

Amendment:

**Appendix 1 — Sample Public Notice for a General Borrowing By-law
(to be given before first reading)**

TOWN OF LITTLE CREEK

PUBLIC NOTICE

REGARDING GENERAL BORROWING BY-LAW NO. 1/12

TO PAY FOR THE CONSTRUCTION OF A NEW FIRE HALL

The Council of the Town of Little Creek at its regular meeting in the Council Chamber, Town Hall, 45 Main Street on June 22, 2012 at 8:00 p.m. will consider the following proposal to borrow \$750,000.00 (borrowing by-law no. 1/12) to pay for:

The construction of a new fire hall at 100 1st Street

The total estimated cost of the fire hall is \$1.0M, to be funded as follows:

*\$250,000.00 from the Fire Hall Reserve Fund; and
\$750,000 to be funded by borrowing*

The borrowing will be repaid over 20 years at a maximum interest rate of 5% per year

*The annual repayment amount will be no more than \$56,250.00 to be levied annually
as part of the general municipal levy.*

Copies of the proposal to borrow and information about the capital project are available at the municipal office at 45 Main Street and on the municipal website at: www.littlecreekmb.inc

Dated at the Town of Little Creek this the 1st day of June, 2012, and issued pursuant to Section 174.1(1) of *The Municipal Act*.

John Jones
Chief Administrative Officer
Town of Little Creek
Phone: (204) 765-4321

Municipal Act Procedures Manual

PART: 6 – FINANCIAL ADMINISTRATION

Subject: 7 – Public Notice of Proposed Borrowing for Capital Projects

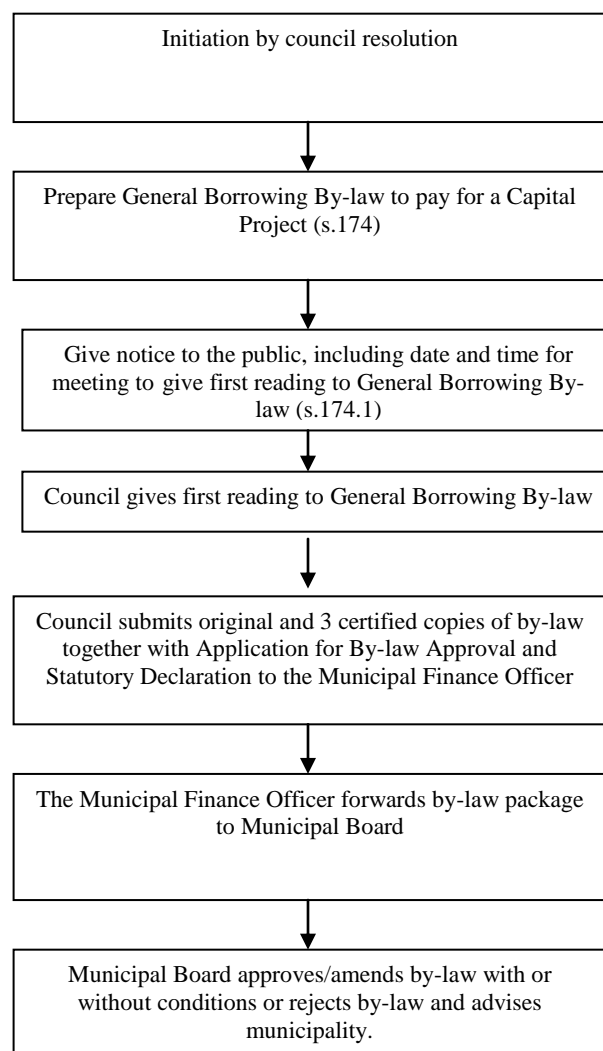
Page: 6.7.6

Date Issued: January 2017

New:

Amendment: ✓

Appendix 2 – Process for General Borrowing By-law to pay for a Capital Project



Reminder: Section 169(6) of *The Municipal Act* requires public notice and a public hearing if the general borrowing is not included in the annual financial plan.

Municipal Act Procedures Manual

PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 8 – Tendering and Procurement Policy	
Page: 6.8.1	Date Issued: October 2012
New:	Amendment: February 2018

6.8 Municipal Tendering and Procurement Policy

(1) Legal Requirements

Municipalities and citizens want assurance that municipalities are getting the best value for money when they acquire goods and services. Citizens also expect that goods and services are acquired through fair, open and transparent procurement processes.

Subsection 251.1 of *The Municipal Act* requires municipalities to adopt a municipal tendering and procurement policy. The policy may be adopted by resolution or by-law. The policy guides the process that municipalities will follow to acquire goods and services and helps to assure citizens that the municipality is getting the best value for money. Having a policy in place will help to ensure equity, fairness and appropriate use of municipal resources.

Municipalities have discretion over the content of their tendering and procurement policy. However, the legislation sets out matters that the municipality's tendering and procurement policy should address. This includes:

- criteria for soliciting procurements by public tenders or other forms of competitive bids;
- forms of contracts and determination of when they are to be used; and
- the process for awarding contracts of procurement.

Municipalities are also required to comply with the tendering and procurement rules established in the new Canadian Free Trade Agreement (CFTA) and New West Partnership Trade Agreement (NWPTA).

The CFTA is an agreement between the federal, provincial and territorial governments of Canada to promote open, efficient and stable domestic market free of barriers in the movement of person, goods, services and investment in Canada. The CFTA replaces the Agreement on Internal Trade (AIT) that set out the MASH Annex requirements.

The NWPTA builds upon the goals of the CFTA and further breaks down trade barriers between British Columbia, Alberta, Saskatchewan and Manitoba. Municipalities must ensure that the obligations under both Agreements are met.

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New:	Amendment: February 2018

The CFTA and NWPTA are available through the following web links:

Canadian Free Trade Agreement: <https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>

New West Partnership Trade Agreement:

http://www.newwestpartnershiptrade.ca/pdf/NewWest_Partnership_Trade_Agreement_2016.pdf

Refer to the table on Page 6.8.7 for procurement thresholds and notice requirements under these agreements.

(2) Application of the Tendering and Procurement Policy

The tendering and procurement policy will establish the procurement criteria and the process that the municipality will use for the various types of purchases it will make.

The municipal tendering and procurement policy applies to the municipality's acquisition, by purchase, lease, rental or other agreement, of goods and services, including construction projects.

Goods include all types of personal property (machinery, culverts, gravel, office supplies, land, computer hardware etc.), and services include, but are not limited to:

- construction projects (eg. municipal buildings, water and sewer facilities, bridges and other major road works).
- consulting
- engineering and design
- accounting and auditing services
- legal services
- maintenance, operation and repair of buildings, machines or equipment

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(3) Content of the Tendering and Procurement Policy

The tendering and procurement policy should provide clear direction to council, administration and citizens on the process the municipality follows to acquire goods and services and for construction projects. Council determines the content of the policy, taking into consideration what will fairly and reasonably meet the needs of the municipality.

The policy should be easy to understand and include direction on each of the following:

- criteria for soliciting procurements – the procurement methods and processes that will be used by the municipality. The policy should also recognize situations where a required good or service is only available from one supplier (sole source supplier)
- forms of contracts and determination of when they are to be used
- process for awarding contracts, such as evaluation of bids, delegations of authority etc.

The policy should also include accounting processes to ensure procurements are tracked and reported on.

Comprehensive tendering and procurement policies generally also include the process that the municipality will use to dispose of surplus capital assets.

A sample municipal tendering and procurement policy is included as Appendix 1.

(4) Soliciting Procurements – Criteria and Processes

Criteria for Soliciting Procurements:

Various criteria may be included in procurement documents. The criteria used depends on the type and value of the purchase and/or project.

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PART: 6 – FINANCIAL ADMINISTRATION	
Subject: 8 – Tendering and Procurement Policy	
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New:	Amendment: February 2018

Acceptable procurement criteria include:

Qualifications, experience (certain number of years in operation), type of services offered, past performance, proposed fees, blueprints, engineering, timing requirements, COR certification, performance bonds, warranty coverage etc.

In considering past performance as a criterion, well documented, relevant and reliable information on previously performed work is required to support a municipality's decision in accepting or rejecting a bid.

Unacceptable procurement criteria include:

- Reprisal clauses: indicates that a supplier need not apply and will not be considered if they are now, or recently have been, in a legal dispute with the municipality (eg. no bid will be accepted from a supplier, including the supplier's subcontractors, that has a claim or has instituted a legal proceeding against the municipality).
- Local preference clauses: indicates that a supplier must be located in a certain geographical area or must have performed previous work in the municipality (eg. supplier must be within 100 km of the municipality; experience working with local organizations and community organizations; knowledge of and experience with local conditions).

Processes for Soliciting Procurements

There are numerous procurement processes. The process used will be dependent on the nature, value and complexity of the purchase. For example, the process used to purchase a new set of tires for the grader will be much different than the procurement process used for the design and construction of a large infrastructure project.

Procurement processes include:

- **Request for Quotations (RFQ)** –
This process is typically used for the purchase of goods and services (except professional services). Generally accepted business practice is to obtain quotations from at least 3 suppliers.

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Subject: 8 – Tendering and Procurement Policy	
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New:	Amendment: February 2018

Quotations may be obtained in different ways:

- **by directly contacting known suppliers** – often used for the procurement of minor goods and services such as standard office supplies, repairs, small tools, etc.

Written quotations are always preferable but a verbal quotation is generally adequate for routine purchases such as regular office supplies, small tools, etc.

If verbal quotations are provided, care must be taken to keep accurate documents of the quotation, including who provided the quotation, the date the quotation was provided, the amount of the quotation, etc.

- **by preparing a written RFQ document** – an RFQ document would be used for the procurement of goods and services that have specific and detailed requirements, but are not considered to be “minor” (eg. gravel requirements), and the cost of the good or service does not warrant the time and level of effort required for a formal tender process (described below).

A public advertisement (bid opportunities) invites suppliers to provide quotations for the sale of goods or services.

Typically, the award of a Request for Quotation goes to the lowest total cost bid received from a supplier.

- **Request for Proposals (RFP)** –

This process involves preparation of a written RFP that outlines the specific needs of the municipality for a service.

RFPs are generally used in the procurement of professional services, such as auditors, planning consultants, engineering services, etc. Potential suppliers are invited to submit proposals that describe how their services, methods, equipment or products can meet specific needs of the municipality.

RFPs are publicly advertised.

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Subject: 8 – Tendering and Procurement Policy	
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New:	Amendment: February 2018

A contract is awarded to the supplier whose proposal is determined to be the most advantageous to the municipality based on criteria for evaluation set out in the RFP and equitably applied to all proposals.

- **Formal Tenders –**

Formal Tenders solicit competitive bids. Tenders are used when detailed specifications are available that permit the evaluation of tenders against clearly stated criteria and specifications. A Formal Tender is a competitive process that typically involves sealed bids, bid deposits and performance bonds.

Formal Tenders may be used for any good or service but are typically used for capital construction projects (water and sewer facilities, new buildings, bridges, etc.). These are complex projects that require the supplier to meet detailed specifications and requirements.

Submissions are compared to the specifications and requirements contained in the tender documents. Typically, the award of a tender goes to the lowest total cost bid received from a supplier meeting the requirements of the tender.

Formal Tenders follow a formal tender process and are publicly advertised. The tender process is complex and detailed. Given this, the preparation of tender documents and guidance through the tender process would almost always involve the municipality's engineering or consulting firm, and the municipality's solicitor.

The Manitoba Water Services Board can provide technical support for the Formal Tender of water and sewer projects. Contact the Board for assistance if required.

- **Sole source purchases –**

Sole source purchases are generally used in the following circumstances:

- when there is only one supplier of a required good or service that meets the needs of the municipality (eg. a rental contract with a purchase option, where the purchase must be compatible with existing equipment, etc).
- during a disaster or emergency declared by a council or head of council under *The Emergency Measures Act*.

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PART: 6 – FINANCIAL ADMINISTRATION

Subject: 8 – Tendering and Procurement Policy

Page: 6.8.7

Date Issued: October 2012

New:

Amendment: February 2018

(5) Advertising Bid Opportunities

Once the criteria and process for the procurement is determined, it is important to let potential suppliers know about bid opportunities. The municipality's tendering and procurement policy should establish when and how the municipality advertises bid opportunities offered through Requests for Quotations, Requests for Proposals and Formal Tenders.

The advertising method should take into account the type of procurement. At a minimum, bid opportunities should be posted on the municipality's website and advertised in the local newspaper.

In addition, municipalities must follow the procurement thresholds and public notice requirements established under both the Canadian Free Trade Agreement and New West Partnership Trade Agreement:

Procurement Thresholds and Notice Requirements under Domestic Free Trade Agreements

	Canadian Free Trade Agreement (CFTA) Article 504 - 3.(b)	New West Partnership Trade Agreement (NWPTA) Article 14 (c)
Municipal Procurement Thresholds	Goods or Services - \$100,000 Construction - \$250,000	Goods or Services - \$75,000 Construction - \$200,000
Effective Date	July 1, 2017	January 1, 2019*
Public Notice	Electronic Tendering System (MERX, Condata etc)	Electronic Tendering System (MERX, Condata etc)

*Effective January 1, 2019, municipalities must meet the lower procurement thresholds under the NWPTA.

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The value of the goods and services and construction is the total financial commitment resulting from the procurement, including any premiums, fees, commissions, interest, duty, freight and applicable taxes.

NOTE: Municipalities may advertise on an electronic tendering system or another system even if the value of the goods and services and construction is of a lesser value.

(6) Forms of Contracts

Municipalities can establish forms of contracts and decide when they will be used.

Many municipalities have a standard contract that they use for regularly occurring services that they purchase (eg. annual snow clearing contracts, etc.). Using standard contracts ensures the expectations of the municipality are clearly articulated (eg. the good or service to be received, timeframes for delivery) and suppliers are treated consistently (eg. payment schedules, hold backs etc.).

Standard contracts will likely not be appropriate for complex procurements, such as large construction projects that occur in phases or over multiple years. The municipality's solicitor is typically involved in developing contracts.

If municipalities have any questions about forms of contracts, they are encouraged to contact their municipal solicitor.

(7) Awarding Contracts

Process

Quotations, proposals and tenders will be awarded using the evaluation process that is specified in the procurement documents. Approval processes may vary, depending on the type of procurement. Generally, the municipality will award contracts as follows:

- the lowest total cost bid, in the case of Request for Quotations received from a supplier for a good or service

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- whether the proposal has met established evaluation criteria, in the case of proposals submitted to the municipality in response to a Request for Proposal
 - the lowest total cost bid received from a supplier meeting the specifications and requirements of the Formal Tender

It is an unacceptable practice to reject any bid, proposal or tender from a supplier solely on the basis that the supplier has initiated legal proceedings against the municipality or if the supplier has a history of unsatisfactory past performance. However, municipalities have the authority and responsibility to seek legal counsel on the risks and legal implications associated with awarding or rejecting a bid, proposal or tender from a supplier on those bases.

Under the CFTA and the NWTPA municipalities are prohibited from giving preference to a local supplier.

The municipality is not required to accept a bid if council decides not to proceed with the purchase, for example, if all bids are too high or if none meet the municipality's specifications / needs.

Delegation of Approvals

The policy may provide for different levels of approval (eg. designated officer, CAO, Council), for certain values and types of procurements, in order to maximize efficiencies of day-to-day operations of the municipality. Considerations in determining the level of approval required may include:

- the total value of the procurement. Council approval is generally recommended for high value procurements such as capital construction obtained through formal Invitations to Tender.
- whether the procurement is routine or non-routine. Routine purchases, necessary for normal municipal operations and that are included in the municipality's financial plan will likely require a lower level of approval than non-routine purchases (eg. construction of facilities).

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- whether the procurement could result in the disruption or significant change to existing services or programs that impact the public. Council approval in these instances is generally recommended.
 - whether the low bid is the accepted bid. In some instances, the low bid may not be the bid that best meets the municipality's needs (eg. if a municipality receives one bid that is substantially lower, the municipality has the right to contact that bidder to ensure all requirements have been met, keeping in mind that all bids are final and cannot be adjusted. If all requirements have not been met, the municipality has justification to award the contract to the second lowest bid). Council approval is recommended where the low bid is not accepted.
 - the nature of the procurement. Council approval is recommended for the award of professional contracts (eg. auditor, planning consultants, etc), as these typically involve evaluation and selection of an approach to a particular municipal matter.

(8) Procurement Accounting and Management

The tendering and procurement policy should also establish internal controls to ensure all procurements can be easily tracked, verified and reported to council.

Procurement Tracking System

Establishing a workable, user-friendly procurement tracking system is essential. An effective procurement tracking system ensures that the municipality can account for all purchases made.

Some municipalities require purchase orders for all procurements or for procurements over a certain dollar value. Alternatively, the tracking system may be as basic as the monthly list of accounts payable with supporting invoices that have been verified/signed by the appropriate designated officer(s), and submitted to council for final approval and payment.

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Procurement Reporting Systems

The tendering and procurement policy should include a requirement for administration to provide Council with financial reports that highlight the procurements made under delegated authorities, including who approved the procurement and the value of the procurement, etc. Monthly reports are recommended.

It is also important for council to be apprised of the status of ongoing capital projects. The policy should include direction for administration to provide council with regular progress reports on major construction projects. Council should always be kept apprised of all cost overruns.

(9) Process for Selling Surplus Capital Assets

Citizens expect a fair and open process when the municipality sells a capital asset (eg. land, vehicles, used equipment, etc.). Having a public process in place for the sale of capital assets ensures the municipality is getting a fair price for the asset and enhances citizen confidence by requiring an open and transparent sale process.

The municipality's tendering and procurement policy should establish the process that the municipality will follow to sell surplus capital assets. At a minimum, the policy should require the municipality to dispose of surplus capital assets through a publicly advertised competitive bid process (eg. Request for Quotation, public auction).

Municipalities may also consider whether there should be exceptions to the process for selling surplus capital assets, for example:

- where the surplus asset is a land-locked parcel. A land locked parcel could be first offered for sale to the adjacent property owner(s) rather than offering it for sale to the general public.
- where the asset may be disposed by way of trade-in rather than offering it for sale and where the values of the assets are similar
- where the surplus asset is given at no cost to a school board, non-profit corporation or association, etc.

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Council approval should be required where there is an exception to the policy.

(10) Communicating the Tendering and Procurement Policy

The municipality's tendering and procurement policy is a public document and should be readily accessible by potential suppliers and citizens. Posting the policy on the municipality's website ensures that potential suppliers and citizens are informed of the municipality's tendering and procurement practices and processes.

(11) Reviewing the Tendering and Procurement Policy

Council should review the municipality's tendering and procurement policy on a regular basis to ensure that it continues to meet the needs of the municipality.

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APPENDIX 1 – Sample Municipal Tendering and Procurement Policy

(NAME OF MUNICIPALITY) MUNICIPAL TENDERING AND PROCUREMENT POLICY

1. PRINCIPLES

The following principles will guide the procurement practices of the municipality and the process for the sale of municipal capital assets.

- An open, fair and consistent process for the procurement of all goods, services and construction projects that will ensure the best value for dollar spent.
- Procurement processes that encourage competitive bidding for the supply of all goods and services.
- An open, fair and consistent process for the sale of surplus capital assets that will ensure the best value for capital assets sold.
- Accountability of the municipality for the procurement of goods and services and the disposal of surplus capital assets.

2. PREAMBLE

The purpose of this policy is to establish guidelines for the purchase of goods and services and for construction projects undertaken by the municipality and guidelines for the sale of municipal capital assets.

3. DEFINITIONS

Bid means a competitive bid received from a supplier in response to a verbal or written Request for Quotation, a Request for Proposal or an Invitation to Tender.

Bid Opportunity means a publicly advertised invitation for suppliers to submit bids for the provision of goods or services through a Request for Quotation, a Request for Proposal or an Invitation to Tender.

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Goods mean all types of personal property (machinery, gravel, office supplies, computer hardware, land, etc.).

Services mean all types of services, including construction (consulting, engineering and design, accounting and auditing services, legal services, maintenance, operation and repair of buildings, machines or equipment, etc).

4. SCOPE

The policy applies to the procurement of goods and services by purchase, lease, rental or other agreement by the municipality and the disposal of surplus capital assets by the Municipality.

5. PROCUREMENT GUIDELINES

The value of the goods and services and construction is the total financial commitment resulting from the procurement, including any premiums, fees, commissions, interest, duty, freight and applicable taxes.

The following guidelines will be followed for the purchase of goods and services, except during a disaster or emergency declared by a council or head of council under *The Emergency Measures Act*.

- **Up to [\$ amount]** – For the acquisition of goods and services with a value of up to [\$ amount] at least 3 quotations will be required. These quotations shall be written except in cases of minor purchases or standardized supplies where a verbal quotation will be considered acceptable. Funds are to be clearly identified in the municipality's financial plan.
- **More than [\$ amount] and less than [\$ amount]** – For the acquisition of goods and services with a value of more than [\$ amount] and less than [\$ amount], at least 3 written quotations will be required.
- **More than [\$ amount]** – For the acquisition of goods and services of more than [\$ amount], the municipality will provide a bid opportunity, using a procurement method identified in Section 6 of this policy.

Bid opportunities will be posted on the municipality's website and advertised in [local newspaper].

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The bid opportunity will also be posted on MERX or another electronic tendering system in accordance with the Canadian Free Trade Agreement (CFTA) Article 504 3.(b).

Effective January 1, 2019 the bid opportunity will be posted on MERX or another electronic tendering system based on the new thresholds established in the New West Partnership Trade Agreement (NWPTA) Article 14(c).

The municipality is not required to accept a bid if council decides not to proceed with the purchase, if all bids are too high, or if none meet the needs of the municipality.

6. PROCUREMENT PROCESSES

The municipality will use the following procurement processes:

- **Requests for Quotation** – the municipality may obtain quotations for provision of goods and services for which there are specific requirements in the following manner:
 - **by directly contacting known suppliers.** This process will be used for the procurement of minor goods and services such as standard office supplies, repairs, small tools, etc.

Where possible, written quotations will be obtained from 3 suppliers. Verbal quotations will be accepted for routine minor purchases.

The municipality will contact only local suppliers if it is determined that sufficient competition exists.

- **through a written Request for Quotations (RFQ)** – an RFQ for the procurement of goods and services will be used where the goods and services have specific and detailed requirements, but are not considered to be “minor” and the cost of the good or service does not warrant the time and level of effort required for a formal tender process.

A public advertisement (bid opportunities) invites suppliers to provide quotations for the sale of goods or services.

The award of a Request for Quotation will typically go to the lowest total cost bid received from a

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- **Requests for Proposals (RFP)** – an RFP will be used to acquire professional services such as auditors, planning consultants, engineering consultants etc. regardless of the amount of the anticipated procurement.

Potential suppliers will be asked to describe how their services, methods, equipment of products can address and / or meet the needs of the municipality.

An award of a contract will be given to the supplier whose proposal is determined to be the most advantageous to the municipality based on criteria for evaluation set out in the RFP and applied to all proposals.

- **Formal Tenders** – the municipality will formally tender for competitive bids for the procurement of capital projects.

Detailed specifications and requirements will be provided in tender documents. The evaluation of tenders will be against detailed specifications and requirements.

A Formal Tender is a formal, competitive sealed bidding process.

Typically, the award of a tender goes to the lowest total cost bid received from a supplier meeting the specifications and requirements of the tender.

- **Sole Source Purchases** – Sole source purchases will be used in the following circumstances:
 - when there is only one available supplier of a required product or service that meets the needs of the Municipality.
 - during a disaster or emergency declared by a council or head of council under *The Emergency Measures Act*.

7. ADVERTISING BID OPPORTUNITIES

All bid opportunities solicited through a Request for Quotations, Request for Proposals, or a Formal Tender will be posted on the municipal website and advertised at least once in the [name of newspaper].

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All bid opportunities for the procurement of goods and services valued equal to or greater than \$100,000 and construction projects valued equal to or greater than \$250,000 will be advertised on an electronic tendering system (MERX) (<http://www.merx.com/>) and/or another system which is low cost, easy to use and readily accessible across Canada.

Effective January 1, 2019 in accordance with the NWPTA all bid opportunities for the procurement of goods and services valued equal to or greater than \$75,000 and construction projects valued equal to or greater than \$200,000 will be advertised on an electronic tendering system (eg. MERX).

8. AWARD OF CONTRACTS

Quotations, proposals and tenders will be awarded using the evaluation process that is specified in the procurement documents. Generally, the municipality will award contracts as follows:

- the lowest total cost bid, in the case of Request for Quotations received from a supplier for a good or service
- whether the proposal has met established evaluation criteria, in the case of proposals submitted to the municipality in response to a Request for Proposal
- the lowest total cost bid received from a supplier meeting the specifications and requirements of the Formal Tender

The Municipality is not required to accept any bid if the Municipality decides not to proceed with the purchase.

The Municipality may enter into a contract with the successful bidder. The form of the contract will be determined by the Municipality.

9. DELEGATION OF APPROVALS

[Note: each municipality will need to determine the types and levels delegations based on their own internal organizational structure, local circumstances, nature of the procurement etc. The following types of authorities are provided as examples only.]

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Authority to approve procurements of a good or service is as follows:

- Less than [\$ amount] – designated officer, as long as the expenditure is identified in the municipality’s financial plan
- Up to [\$ amount] - Chief Administrative Officer, as long as the low bid is accepted and the expenditure is identified in the municipality’s financial plan
- Over [\$ amount] or where the low bid is not accepted – Council
- All contracts for professional services – Council

10. PROCUREMENT ACCOUNTING AND MANAGEMENT

Procurement Tracking System

The Chief Administrative Officer (CAO) will prepare accounts payable listings that include the supplier name, the good(s) and/or service(s) provided and the amount payable to each supplier.

At the commencement of the project, the CAO and the supplier will review the Scope of Work to establish requirements, responsibilities, schedules, contract terms etc. to ensure complete and full understanding of the terms.

The accounts payable listing(s), supported by invoices that have been signed by the appropriate department head(s), are to be submitted to Council at the first regular meeting of Council each month for payment approval by resolution of Council.

The CAO will issue payment for all accounts payable authorized for payment by resolution of Council and to maintain adequate record of accounts payable listings, the corresponding invoices and cheque registry information.

Procurement Reporting System

The CAO will provide Council with a monthly report on contracts awarded under this policy.

The CAO will provide Council with a monthly progress report for each capital construction project that is underway. A progress report will be provided each month, beginning with the starting month of the project until the completion of the project when all invoices relating to the project have been paid.

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11. PROCESS FOR SELLING SURPLUS CAPITAL ASSETS:

Surplus capital assets will be disposed of in the following manner:

- competitive bid process through a Request for Quotations
- public auction

Invitations to bid on capital assets offered for sale by the municipality will be:

- posted on the municipality's website for at least [number of days] before the closing date of the invitation to bid.
- published in at least one edition of the [name of newspaper].

Contracts for the sale of a capital asset to a bidder shall be awarded using the evaluation process that is specified in the invitation to bid. The municipality is not required to accept a bid if Council decide not to proceed with the sale, for example, if all bids are too low. The highest or any bid will not necessarily be accepted.

The CAO may, with the approval of council, award surplus capital assets without competition or auction to any municipality in limited circumstances, as determined and approved by Council.

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6.9 Private Works Policy

(1) Legal Requirements

Citizens expect that municipal resources (equipment and labour) will be used efficiently and appropriately. Having a municipal private works policy in place will help to ensure consistent and fair decisions by providing clear direction to council, employees and citizens on the appropriate use of the municipality's resources.

Subsection 250(2)(e) of *The Municipal Act* provides municipalities with the authority to engage in private works. Private works are works carried out on private property, which lie outside of the responsibility of the municipality.

Councils have the authority and responsibility to decide whether it is in the best interest of the municipality to undertake private works, taking into consideration availability of the municipal equipment and labour and competition with private business.

Subsection 250(3)(4) and (5) requires all municipalities to adopt a private works policy that sets out the rates or charges for private works carried out by the municipality. A resolution of Council is required.

(2) Content of Private Works Policy

A municipality's private works policy may be that private works are not undertaken under any circumstances. However, if a municipality does undertake private works then the policy will identify the type of private works the municipality will undertake, the rates the municipality will charge and how to make a request for private works.

A sample private works policy is attached as Appendix 1.

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Required Elements

Municipalities must establish the rates or charges, or the method of fixing the rates or charges for private works in their private works policy.

Key considerations in determining rates include:

- The cost associated to undertake a private work. Rates should, at the very minimum, be at full-cost recovery. Costs to consider include fuel and maintenance, depreciation, travel time and labour.
- Rates charged by private operators who perform similar work in the municipality. If rates are lower than the market place, municipalities may attract business at the expense of the private sector, negatively impacting local businesses.
- Rates charged by neighbouring municipalities.

There are several options as to how rates can be applied to private works.

- Hourly – appropriate for equipment that will be used for a short period of time (e.g. rental of the excavator to dig a basement).
- Daily – a rate per day might be best for equipment that is needed for a longer period (e.g. a pump rental).
- Minimum flat fee – a minimum fee for work that will not take long to complete (e.g. a minimum one hour charge for snow removal from a private lane).

Depending on the type of private works undertaken by the municipality, a policy will include a combination of rates.

Additional Elements

Introductory Provisions

A private works policy should include introductory provisions that establish its purpose, scope and application.

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Principles – to state at a high level that municipal resources (labour and equipment) used for private works are to be done in a fair, equitable and transparent manner.

Preamble – to state that the policy operates in addition to other municipal policies determined by council.

Definitions – defining the types of private works that the municipality will undertake. For example, the types of equipment that may be used for private works and what is included in the rate (for example – fuel, operator, travel time).

Scope – Citizens should be assured that the municipality will not pursue private works at the expense of municipal public works. It is important that any policy clearly state that public works will take precedence over private works. Consideration should be given to the impact a private works policy will have on private operators. Generally, municipalities do not aim to compete with locally owned or operated private contractors or companies. In some cases policies may want to state that requests will be referred to private operators.

Additional Provisions

Private works policies may include additional provisions that address specific areas of application for the policy. These will ensure that the policy is consistently implemented and understood by council, administration and individuals desiring the work.

Administration – to state how and when payments for private works are to be made:

- Timing of payments – the policy should establish whether payment will be required prior to the work being done or on receipt of invoice from the municipality.

The nature of the work should be taken into consideration when deciding method of payment. For example smaller jobs such as snow clearing may be invoiced after the work has been completed where larger jobs could require payment in advance or at least a down payment in advance.

- Invoicing – to ensure ease of administration and collection. Municipalities should consider what invoicing practices are currently in place for other services when deciding how to invoice for private works.

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- Penalties for late payments – municipalities should consider its existing practices when considering how penalties will be applied, for example its penalty rate on tax arrears.

Approval – to state how approval of private works will be provided:

- Application forms – to ensure the municipality clearly understands the type of work to be completed, can prepare appropriate cost estimates, and ensure proper approvals are in place, municipalities may require the applicant to complete a private works application form.
- Approved cost estimate – to ensure applicants understand the costs of the work and to minimize disputes later, it is a good practice to require the applicant to sign an approval form of a written estimate provided by the municipality.

Estimates should be clear about whether the applicant or the municipality is responsible to get other permits that may be required (e.g. Manitoba Telephone System, Manitoba Hydro permits).

- Council approval – Council may want to reserve the right to approve larger projects, for example those which exceed a certain dollar threshold that is set in the policy. This helps to ensure that projects which might be time-consuming do not conflict with public works projects.

Legal Liability – to state the applicant will be assuming legal liability and to protect the municipality, the policy should state that:

- municipalities will not be held responsible for any damage or injury which might arise when undertaking private works.
- applicants will be required to sign a waiver form before the private work is undertaken.
- occupational, health and safety standards will be the same for private works as they are for public works projects.

Right of refusal – to state that the municipality reserves the right to refuse any request for private works. There are many reasons why municipalities may not undertake a private work, including a conflict with public works projects, lack of equipment / expertise, etc.

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Right of council members and staff – to state that council members and municipal employees will be treated the same as private citizens when requesting private works. Citizens will be assured that the municipality’s practices are fairly and consistently applied to all citizens.

(3) Communicating the Private Works Policy

Posting the policy on the municipality’s website and/or including information with water bills or tax bills are both excellent ways to keep citizens informed about the municipality’s private works policy.

(4) Reviewing the Private Works Policy

Council should review the municipality’s private works policy on a regular basis, at least once each year, to ensure that custom rates are fair, reflecting changes in costs and/or the current marketplace.

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Appendix 1 – Sample Municipal Private Works Policy

**(NAME OF MUNICIPALITY)
MUNICIPAL PRIVATE WORKS POLICY**

PRINCIPLES:

Establishing a Private Works Policy ensures that municipal equipment and resources are used in a fair and equitable manner. It also serves to enhance the overall accountability and transparency of the municipality.

The purpose of this policy is to outline council’s requirements for the undertaking of private works by the municipality.

PREAMBLE:

This policy operates in addition to other policies and by-laws of the municipality.

DEFINITIONS:

Employee – means any person employed by the municipality, and includes the chief administrative officer, designated officers, full-time, part-time, contract, or casual employees.

Private works – any work undertaken by the municipality on private property other than a public work that is the responsibility of the municipality.

SCOPE:

Private works are not a core function of the municipality and will not take precedence over public works. Private works will only be considered if private contractors or equipment are not available within the municipality to either supply the service or perform the required work. The municipality will refer requests for private works to local private operators where available.

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Amendment:

This policy applies to works and services carried out by the municipality on private property, within and outside the boundaries of the municipality.

RATES:

Rate charged for private works are as follows:

Equipment	Rate	Minimum Charge
Excavator	\$ per hour (includes operator)	½ hour - \$
Grader (road & lot grading) (with blade/wing)	\$ per hour (includes operator)	½ hour - \$
Grader (snow removal) (with snow plow/wing)	\$ per hour (includes operator)	½ hour - \$
Water pump – 6 inch	\$ per day (no operator)	1 day - \$
Sewer camera	\$ per day (no operator)	½ day - \$

APPLICATIONS/APPROVALS:

All private works applications must be made in writing to the municipality and approved by council or a designated officer of the municipality.

The applicant will be provided with a cost estimate prior to the municipality undertaking the works. The applicant will be required to sign an approval form of the written estimate for a private works project estimated by the municipality to exceed a cost of \$.

Council reserves the right to review and consider, prior to the work being undertaken by the municipality, any private works project estimated to exceed a cost of \$.

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Amendment:

PAYMENT:

The applicant will be invoiced for public works undertaken by the municipality, at the rates fixed in this policy. Payment is due on receipt of invoice from the municipality. Interest will be charged, at the rate of [same as penalty on tax arrears] per month, on any balance outstanding after 30 days of the invoice date.

LEGAL LIABILITY:

The applicant shall indemnify the municipality against any claim, action or process for damage or injury which might arise during the progress of such private works. The applicant may be required to sign a waiver form before the private work is undertaken by the municipality.

Sample

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6.10 Report from the Office of the Auditor General

(1) Legal Requirements

Municipalities are mature, responsible governments, with broad authority to manage their own affairs and make decisions in the best interests of their municipality. As governments, citizens expect municipalities to follow good governance practices, including compliance with legislation, responsible management of the municipality's financial affairs and transparent decision-making.

The Office of the Auditor General (OAG) is an independent office of the Legislative Assembly of Manitoba, established under *The Auditor General Act*. The OAG has authority to audit a recipient of public money, which includes a municipality, under *The Auditor General Act*.

Subsection 198.1(1) of *The Municipal Act* requires municipalities that are audited by the OAG to table a copy of a report received from the OAG at the first council meeting after the report is made public. This ensures that citizens have the opportunity to know about the report and the recommendations made by the OAG.

Subsection 198.1(2) requires council to adopt a response to any recommendations made by the OAG, as soon as practicable after the report is tabled. The response must indicate which recommendations have been accepted by council and the measures they will take to implement them. The response must specify the time period in which any measures will be implemented.

Subsection 198.1(3) requires the head of council to annually report to council on its progress in implementing any measure, until it is implemented. The report by the head of council must be provided at an open council meeting. While the duty is on the head of council to report, council as a whole is responsible to ensure that recommendations are implemented. Citizens will hold council accountable for accepting the OAG's recommendations, how the recommendations are being implemented, and the timeframe for implementation.

(2) Office of the Auditor General

The OAG has broad authority under *The Auditor General Act* to examine and audit the operations of a municipality to ensure:

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- financial and administrative provisions have been complied with
 - public money has been expended with proper regard for economy and efficiency
 - appropriate accountability mechanisms are in place
 - the form and content of financial information documents are adequate and suitable.

The OAG has discretion to determine when to undertake an audit of a municipality. However, previous audits of municipalities have all been triggered by citizen complaints to the OAG about the operations of the municipality. In determining whether to undertake an audit, the OAG will consider the nature, extent and magnitude of the complaints received.

At the conclusion of the audit, the OAG provides a final report to the municipality, which typically contains recommendations for improving the operations of the municipality.

The OAG will also provide the report to the Legislative Assembly of Manitoba as well as to the Minister of Municipal Relations. The report becomes public when it is distributed to the Members of the Legislative Assembly. The report is also posted on the OAG's website at: <http://www.oag.mb.ca>.

(3) Municipal Requirements

OAG Examination

The OAG has broad authority and in undertaking an audit, may examine any municipal document related to its investigation. This ensures that the audit is comprehensive and evidence-based.

Depending on the nature of the audit, typical documents that are examined by the OAG include:

- financial records
- audited financial statements
- operating policies (eg. tendering and procurement policies)
- delegation of authorities
- by-laws and resolutions (eg. procedures by-law; council remuneration by-law)
- council minutes

Council members and administrative staff must comply with the OAG's request for

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information. It is an offence to obstruct or provide false or misleading information to the OAG. Non-compliance could result in an individual being fined up to \$10,000.

OAG Draft Report

After completing its audit, the OAG will prepare a draft report. The OAG will share the draft report with the municipality. The OAG will also discuss its findings with the municipality, typically the head of council and the chief administrative officer (CAO).

The municipality has an opportunity to respond to the review and comment on the report before it is finalized.

The municipality will also have the opportunity to respond to the draft report. The municipality's response will be included in the OAG's final report, and as such will be public information. Council will want to ensure, therefore, that the response provided to the OAG accurately reflects the views of council as a whole.

The nature of the response is at the discretion of council. The response may be general (overall views about the audit findings but no comments about individual recommendations) or specific (responding to individual recommendations). Municipalities may wish to view other OAG reports when developing their own responses.

OAG Final Report

The OAG will provide a final report to the municipality, with recommendations for improvement, at the conclusion of the audit. The report is not public until it is distributed to the Members of the Legislative Assembly of Manitoba. The OAG will advise the municipality when the report will be public.

Tabling the Report

Municipalities are required to table the OAG's report at the first council meeting after the report is made public. The report must be tabled at an open council meeting.

Response to OAG Recommendations

Council must adopt a response to each of the recommendations made by the OAG as soon as possible after the report is tabled. If council intends to implement a measure in

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response to an OAG recommendation, a time period within which it will be implemented must be included. The time period should be clearly stated and reasonable to ensure that the measure will be implemented. For example:

- The municipality will comply with tendering and procurement processes established in its Tendering and Procurement Policy, effective immediately.
- The municipality will develop a policy for compensation to council members and employees for travel, accommodation and meal expenses by [specific date].
- The municipality will ensure that a service plan is developed by the Local Urban District committee and approved by council for each year, beginning with the [next year's service plan].

The CAO is responsible for ensuring that the measures are developed and implemented within the required time period. It will be important for the CAO to provide regular updates (eg. monthly) to council on the progress of implementation so that Council can be assured that it is meeting its commitment.

Report by Head of Council

The head of council must annually report on the progress of the measures being implemented by the municipality until such time as they are all fully implemented.

The annual report will be based on information provided by the CAO, and should include the following information to ensure council, administration and citizens all know and understand the status of the municipality's response:

- the recommendation made by the OAG in its report
- the municipality's response to the recommendation by the OAG
- the measure to be implemented in response to the recommendation and the time period in which it was to be implemented
- whether the measure is fully implemented, partially implemented or not implemented. If a measure is partially or not implemented, a new time period for full implementation should be stated.

The report by the head of council must be provided at an open council meeting. It is important to note, however, that while it is the duty on the head of council to report, council as a whole is responsible to ensure that measures are implemented.

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7.1 Spheres of Jurisdiction¹

(1) Introduction

The new municipal legislation represents a fundamental shift in approach:

- ***from a restrictive approach***, which limits municipalities to enacting by-laws with respect to only those things listed and only in those ways specifically provided;
- ***to a broad approach***, within named “spheres of jurisdiction” and in a broad range of ways.

This shift in approach is applicable to all areas of municipal powers, but is most apparent in the regulatory powers granted to municipalities.

Guide to Interpretation

Because of the fundamental shift in approach, guidance in interpreting the regulatory powers is expressly given in section 231:

The power given to a council under this division to pass by-laws is stated in general terms

(a) *to give broad authority to the council and to respect its right to govern the municipality in whatever way the council considers appropriate, within the jurisdiction given to it under this and other Acts; and*

(b) *to enhance the ability of the council to respond to present and future issues in the municipality.*

¹ Adapted for this manual from material prepared for the Municipal Law course, Manitoba Municipal Administrators Certificate program, University of Manitoba.

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This provision is expressly limited to powers given to the council under Part 7, Division 2, and is in special recognition of the appropriateness of local responses to the enumerated powers. Also, there is a recognition of the council's right to govern, at present and in the future, to provide flexibility.

Limitation on Spheres of Jurisdiction

The spheres of jurisdiction are set out in subsection 232(1), which begins:

A council may pass by-laws for municipal purposes respecting the following matters:

Note that within the opening words is the limitation "***for municipal purposes***". The definition of "municipal purposes" is set out in section 3, as follows:

The purposes of a municipality are

- (a) to provide good government;*
- (b) to provide services, facilities or other things that, in the opinion of the council of the municipality, are necessary or desirable for all or a part of the municipality;
and*
- (c) to develop and maintain safe and viable communities.*

While these purposes are broadly stated, they may be seen as a limitation, for if a thing does not come within one of these purposes, it is beyond the powers of the municipality.

In addition to these purposes, also to be incorporated into the limitation on by-laws, are the common law principles of ***good faith*** and ***in the public interest***, which by common law are required to be met for a municipality's by-law to be found valid.

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Good faith means that the council or its members, are not acting fraudulently, oppressively or for improper motives. The obligation to prove bad faith is on the person claiming it, and the person who acted does not have to prove good faith. Generally, in the absence of evidence of bad faith, the public interest is presumed. (A private interest in itself would likely be evidence of bad faith.)

If there is both good faith and the by-law is in the public interest, the *reasonableness* of the by-law is not to be examined by the courts. The principle is that the council is elected to make certain policy decisions and, absent bad faith or private purposes, a council may make unreasonable decisions, for which it must answer at the next election.

(2) The Spheres of Jurisdiction

Under the old municipal legislation, the municipality's regulatory or law making powers were scattered through the Act.

Under the new legislation, all of those powers, and likely more, are included in the broad powers granted under section 232, which sets out the spheres of jurisdiction, or kinds of things about which a municipality may pass regulatory by-laws.

Within the context of the limitation, "for municipal purposes", the following examines each of the broad spheres set out in section 232.

- **(a) the safety, health, protection and well-being of people, and the safety and protection of property;**

This clause includes two broad categories with respect to which by-laws may be passed:

- people, and
- property.

Note, however, the difference: that is, "health" and "well-being" apply only to people, whereas "safety" and "protection" applies to both people and property.

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This differentiation may be taken to recognize either that property does not have “health” and “well-being” about which by-laws need be passed, or perhaps that jurisdiction with respect to those issues are retained by the province under The Environment Act and The Public Health Act. The former is perhaps the more likely reading.

Safety and protection cover a wide range of things specifically set out in the previous municipal legislation, such as:

- emergency measures (subject to The Emergency Measures Act)
- unsafe premises
- health and sanitation (including ambulance)
- scavenging and garbage
- public order and morality

The range of things about which a municipality may pass its by-laws under this clause is not, however, limited by those things that are set out in the previous Act, and a matter need only be of a type or nature that may be categorized as safety and protection of people and/or property or the health or well-being of people.

- **(b) people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation;**

The ability to pass by-laws under this category is wide, “with respect to people, activities or things”, but is limited to public places or places open to the public. Under this category, regulation of people on exclusively private property is not contemplated.

Based on principles of statutory interpretation, the use of the word “including” after “public place or place open to the public” is to be read as illustrative of the types of places, but not to be restrictive.

The inclusion of private clubs and facilities that are exempt from municipal taxation is in recognition that to qualify as exempt from taxation, there is a level of public interest in the facility.

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The types of by-laws that may be passed under this clause might include restrictions on persons under 16 from entering video arcades, or restricting activities, such as smoking in shopping malls.

- **(c) subject to section 233, activities or things in or on private property;**

The power under this clause is more limited than that under clause (b), in recognition that activities on private property should not be subject to as great a governmental regulation as might attach to public places. However, keep in mind that clause (b) refers to “places open to the public”, which will include a number of properties otherwise thought to be private.

Note the reference to section 233, which limits this power to some extent, providing that such a by-law may only contain provisions in respect of certain things.

(a) the requirement that land and improvements be kept and maintained in a safe and clean condition; This is fairly broad, as long as the matter can be related to safety and cleanliness, and may include such things as enclosing excavations (safety) and weed cutting (cleanliness).

(b) the parking and storing of vehicles, including the number and type of vehicles that may be kept or stored and the manner of parking and storing; This would cover derelict vehicles, which has been a significant issue of concern for municipalities.

(c) the removal of any top soil; Because many developers remove valuable top soil, which may impact negatively on the surrounding community, this power to intervene is expressly provided, so that there be no question that municipalities have this power.

(d) activities or things that in the opinion of the council are or could become a nuisance, which may include noise, weeds, odours, unsightly property, fumes and vibrations. A nuisance is the use of one’s own property in a manner that interferes with the use and enjoyment of a neighbouring property. This would permit noise by-laws, limiting the emission of noise above a certain level, at all or at certain times. This clause would also support a by-law requiring that weeds be cut.

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Also note the powers with respect to private property under clause (f) private property adjacent to roads, (g) off-road vehicles, (h) drains, and also the general powers under (i) fire prevention (k) animals and (n) businesses.

- **(d) municipal roads, including naming the roads, posting the names on public or private property, and numbering lots and buildings along the roads;**

Municipalities will continue to have certain opportunities to set traffic restrictions, subject to the Highway Traffic Board and related legislation. In addition, municipalities will be entitled to continue their jurisdiction with respect to naming roads and numbering lots. The opportunity to enter on private land to post signs is an interference with private rights and so that power must be expressly given.

- **(e) private works on, over, along or under municipal roads;**

This will include such things as permits for irrigation systems crossing roads, leases of air space, signage encroaching over the road, and other uses of road allowances.

- **(f) property adjacent to highways or municipal roads, whether the property is publicly or privately owned;**

This will include such things as prohibition on construction of buildings or planting of trees adjacent to roadways to protect sightlines, erection of snow fences, billboards and other signage. Note that 234 provides greater detail about the types of things permitted under this sphere.

- **(g) the operation of off-road vehicles on public or private property;**

This will permit restrictions on the operation of all terrain vehicles, subject to The Off Road Vehicles Act.

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- **(h) drains and drainage on private or public property;**

This should permit by-laws regulating private drainage into municipal drainage systems, for cleaning drains, and for compelling private owners to keep drains clean and unobstructed. The right of municipalities is subject to The Water Rights Act and The Water Resources Administration Act.

- **(i) preventing and fighting fires;**

This power should permit municipalities to set regulations with respect to fires, such as preventing open fires in the municipality, or limiting when open fires may be permitted, and also gives such wide powers as preventing interference with or providing assistance to a municipal fire protection fire. This right will be subject to various provincial legislation, such as The Fires Prevention Act. The Office of the Fire Commissioner should probably be consulted with respect to a by-law under this sphere.

- **(j) the sale and use of firecrackers and other fireworks, the use of rifles, guns, and other firearms, and the use of bows and arrows and other devices;**

Note the difference: the sale of firecrackers and fireworks can be restricted, whereas the sale of firearms cannot. However, municipalities may regulate the use of firearms, that is, with respect to hunting or otherwise. Again, there is a body of provincial laws dealing with hunting seasons and licences and federal legislation dealing with the storage and sale of firearms.

- **(k) wild and domestic animals and activities in relation to them, including by-laws differentiating on the basis of sex, breed, size or weight;**

This should permit municipalities to enact by-laws dealing with dogs running at large, and rural municipalities to set regulations with respect to various farm animals. Clearly, such by-laws may treat different species, and animals with various characteristics within a species, differently.

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- **(l) public utilities;**

Sewer and water systems will be covered under this clause. Regulations on the use of those systems may be set, subject to the jurisdiction of The Public Utilities Board.

- **(m) local transportation systems;**

Public transportation systems would come under this provision.

- **(n) businesses, business activities and persons engaged in business;**

This should permit regulation of hours of business and business licensing. In addition, a municipality could rely on this provision for diverse activities such as to require promoters of special events to provide bonding for clean up of premises and for requiring extra policing.

- **(n.1) the establishment of a program of property tax credits** to encourage and assist in the renovation of buildings that have been designated as municipal heritage sites under *The Heritage Resources Act*;

This will permit municipalities to provide a property tax credit to facilitate the restoration and preservation of designated heritage sites.

- **(o) the enforcement of by-laws.**

Enforcement of by-laws is itself a sphere of jurisdiction, indicating the flexibility municipalities may exercise in this regard. Hopefully, this will alleviate the problems currently related to by-law prosecution, a traditional area of difficulty for municipalities.

Subsection 236(1) sets out some of the types of enforcement provisions. Note that those provisions are by example and are not intended to be all-inclusive:

- (a) providing inspections for procedures, including inspections, for determining whether by-laws are being complied with;* This should permit a variety of things, such as monitoring, self-reporting, and obviously, entry for inspection.

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(b) *remedying contraventions of by-laws . . .*; The option here includes penalties, for collection of penalties as if taxes, seizing and selling things related to a contravention, and imprisonment.

Note, however, an important restriction on this power is pursuant to subsection 236(2), which limits the enforcement provisions only to “regulatory” by-laws. This means that for other by-laws, for example, an agreement done by by-law, a municipality may only set out the terms of the agreement and cannot look to these enforcement provisions to enforce the agreement.

(3) How Municipalities May Exercise Powers Within the Spheres

The way in which a municipality may respond to a sphere of jurisdiction is set out in subsection 232(2). A municipality may:

- (a) **regulate or prohibit;**

Regulation may include setting terms and conditions, such as minimum standards to be met, or levels not to be exceeded. Prohibition is the outright sanction against something undertaken or done.

- (b) **adopt by reference in whole or in part, with any changes the council considers necessary or advisable, a code or standard made or recommended by the Government of Canada or a province or a recognized technical or professional organization, and require compliance with the code or standard;**

This permits a council to adopt lengthy and detailed codes, by referring in the body of the by-law to the code and without repeating the whole of the code. This clause should save much time and effort for administrators. Note not only may the code be adopted, but the municipality may, and probably should, provide that the code is to be complied with, as adoption itself may not require compliance. As a matter of drafting, you should ensure that the code is properly referred to by name, so that it is clear which code is to be complied with. Failure to properly identify the code may result in problems in attempts to enforce it.

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- **(c) deal with any development, activity, industry or business, or thing in different ways, or divide any of them into classes and deal with each class in different ways;**

This is a very important provision, without which the municipality may have had difficulty at law differentiating between things. However, although on its wording this provision permits similar things to be dealt with differently, a municipality must have a good reason for such different treatment. A municipality would probably be better advised to divide the things into classes and treat the classes differently, rather than dealing with individual things.

- **(d) establish fees or other charges for services, activities or things provided or done by the municipality or for the use of property under the ownership, direction, management or control of the municipality;**

This is broadly worded and should permit a variety of fees or charges to be levied. Such fees or charges must be set in the by-law to be valid.

- **(e) subject to the regulations, provide for a system of licences, permits or approvals, including any or all of the following;**

A variety of options then follow, including setting licence fees higher for persons who do not maintain a place of business in the municipality, prohibiting activities until a licence is obtained, setting terms and conditions of permits, providing for the length (duration) of a licence, and providing for security to ensure compliance with a licence.

A restriction under section 237 exempts from any licencing requirements the sale of Manitoba produce by the person who grew it.

- **(f) except where a right of appeal is already provided in this or any other Act, provide for an appeal and the body that is to decide the appeal, and related matters;**

This may be of assistance where, in the by-law, the issuance of a licence is delegated to the chief administrative officer or a designated officer. The council may want to provide for an appeal of that person's decision, to council.

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Page: 7.1.11	Date Issued: March 1997
New: <input checked="" type="checkbox"/>	Amendment:

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- **(g) require persons who do not reside or have a place of business in the municipality to report to the municipal office before conducting business in the municipality;**

This may assist a municipality in regulating business in the municipality.

- **(h) require pawn brokers to report all transactions by pawn or purchase to the head of council or police;**

This may assist in crime prevention, by better tracing of stolen goods.

Division 3 of Part 7 also sets out a variety of things that a municipality may do with respect to by-law enforcement.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.1

Date Issued: January 2017

New:

Amendment: √

7.2 By-law Enforcement and Compliance

(1) Introduction

Municipalities have broad by-law making powers under provincial legislation. *The Municipal Act, The Planning Act, The Building and Mobile Homes Act, The Highway Traffic Act*, and other legislation provides municipalities with the authority to enact by-laws. Municipal by-laws are the laws of a municipality and their purpose is to provide good and fair government and to develop and maintain safe and viable communities. To be effective, municipal by-laws must be enforced and enforcement decisions and actions must be fair and consistent for everyone.

This section outlines the enforcement powers municipalities have under *The Municipal By-law Enforcement Act (MBEA)* and *The Municipal Act* and the type of enforcement procedures that can be used. Municipalities have significant enforcement powers, including the authority to develop an administrative penalty scheme to enforce certain by-laws outside of the provincial court under *The MBEA*. Other enforcement powers include: undertaking inspections, seizing, removing and impounding, issuing compliance orders and filing an application to the Court of Queen’s Bench for an order, under *The Municipal Act*.

Education and ongoing communication with citizens are proactive measures that all municipalities should take to ensure citizens know what municipal by-laws are in place and what they must do to comply with them. For example, municipalities can post information about their by-laws on their website and can include inserts with information about new by-laws with property tax statements and utility bills. If citizens understand the by-laws of a municipality and what is expected of them, contraventions are less likely to occur.

(2) How do Municipalities Enforce By-laws?

Municipalities have various options to enforce by-laws, based on the municipal enforcement powers that are established in legislation. It is important for municipalities to have a solid understanding of the enforcement authorities they have under different legislation and the roles and responsibilities of those responsible for municipal by-law enforcement. There is no “one size fits all” approach to by-law enforcement. A municipality will need to determine the steps and enforcement tools that will be effective to achieve compliance for each by-law.

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Two Processes for By-law Enforcement

This section outlines the authorities and processes for municipalities to enforce by-laws under *The MBEA* and under *The Municipal Act*.

Municipalities enforce by-laws under *The MBEA* through an administrative penalty scheme. A municipality must use the administrative penalty scheme to enforce parking by-laws and can choose to enforce by-laws other than parking under *The MBEA*. The administrative penalty scheme is administered locally by the municipality and replaces the Provincial Court system. If a municipality chooses to use the administrative penalty scheme they must adopt a ***Municipal By-law Enforcement Act Implementation By-law*** that establishes how the system will work and designates the by-laws that will be enforced under it.

A municipality will need to spend time developing the system before it is implemented, to ensure that it will work practically, effectively and professionally for the municipality. Municipalities have the option to share services to jointly administer the system.

While the administrative penalty system offers a streamlined and cost-effective approach to enforce by-laws, it is not suitable for all types of by-laws and may not be suitable for every municipality. The system is well suited for by-law contraventions that are “over and done” once they occur and where a penalty is sufficient to resolve the issue or deter it from happening again.

A step by step process for by-law enforcement under *The MBEA* and under *The Municipal Act* is outlined on pages 7.2.6 to 7.2.12.

Who Enforces By-laws?

Municipalities must also have a clear understanding of the positions that have the authority to enforce the by-laws of the municipality. A description of the positions that may be involved in the by-law enforcement process is provided below.

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By-law Enforcement Officers

A by-law enforcement officer is a designated officer appointed by Council to enforce the by-laws of a municipality. Their powers and duties are set out in the by-laws that they enforce and may include issuing penalty notices, conducting inspections and investigations and issuing orders to remedy a by-law contravention.

Only a by-law enforcement officer has the authority to enforce by-laws under *The MBEA*. By-laws that are enforced under *The Municipal Act* may be enforced by a designated officer of the municipality. Designated officer positions may include the Chief Administrative Officer, By-law Enforcement Officer, Animal Control Officer, Public Works Foreman, etc. Designated officer positions are created by municipal by-law and the by-law that is being enforced must include provisions for the positions that are authorized to enforce it.

Note: Unless the by-law enforcement officer is a designated peace officer, they do not have authority to stop moving vehicles; therefore they cannot issue speeding tickets and other tickets for violations under *The Highway Traffic Act* that would require stopping a moving vehicle.

Screening Officers

The role of the screening officer is to hear persons who wish to dispute a penalty notice and to make a decision on the outcome of the dispute. Screening officers are appointed by the municipality and have the authority to cancel a penalty notice if they determine the contravention did not occur or if the penalty notice contains incorrect or insufficient information. They can also be given additional authority in the municipality's *MBEA Implementation By-law* to reduce the amount of a penalty or to enter into a compliance agreement (s. 3(2)(d), *The MBEA*).

A screening officer holds an important position because they are responsible for making decisions in a formal municipal by-law enforcement system that replaces the provincial court system. The screening officer should have expertise in dealing with municipalities and councils and must be unbiased in their decisions. They must be fair, promote confidence in the system and must be trained in mediation and conflict resolution.

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A retired police officer, judge, member of the military, legal services employee may all be considered for the position of screening officer. A municipal employee may not be the best choice for a screening officer position, given their affiliation with the municipality and the need for them to deal with citizens on other matters on a day-to-day basis. Council members and council committee members are not eligible to be appointed as screening officers for the municipality that they serve.

See page 7.2.7 for further information about the powers of screening officers.

Adjudicators

Adjudicators are appointed by the Deputy Attorney General and are responsible to hear and make decisions on appeals from individuals who wish to dispute the decision of a screening officer. Municipalities are responsible for contacting the Chief Adjudicator to arrange for an adjudication hearing. More information will be made available about contacting a Chief Adjudicator through the Department of Justice, Manitoba Courts Division.

See page 7.2.8 for further information about the adjudication process.

Drafting Municipal By-laws

Municipal by-laws must be well thought out before they are implemented. After a municipality has chosen an enforcement process and decided who will be responsible for enforcement, a by-law will be drafted that includes provisions for enforcement.

The by-law must include all provisions for enforcement, including the penalty schedule for by-law infractions, if applicable. A by-law may set different penalty rates for first, second, and third time offences. For example, a violation of a noise by-law may have a penalty set at \$50.00 for a first offence, \$100.00 for a second offence and \$150.00 for a third offence. The by-law may also include provisions for multiple penalties for ongoing infractions.

Municipalities are encouraged to seek legal advice when drafting new, complicated by-laws. While some municipal by-laws are straightforward, others are more complex and will require input from a municipal lawyer to ensure that they are in accordance with legislation and enforceable.

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Page: 7.2.5

Date Issued: January 2017

New:

Amendment: √

The Municipal By-law Enforcement Act Implementation By-law

Municipalities that choose to use the administrative penalty system under *The MBEA* must first adopt an implementation by-law. This by-law must list all by-law contraventions that will be dealt with under *The MBEA*, and must be amended as a municipality chooses to designate other by-laws under the Act. The maximum penalty for a violation under *The MBEA* is \$1,000.00.

Note: Parking by-laws must be enforced under *The MBEA* as of February 2017.

An implementation by-law must:

- List all by-law contraventions that will be dealt with under *The MBEA*
- Establish screening officer positions and the powers of screening officers
- List the amount of the penalty for each contravention and the time frame to pay the penalty, or request a review by a screening officer (must be at least 30 days)
- Establish the adjudication process (more than one municipality can join together to administer adjudications)

The MBEA provides municipalities flexibility in developing a locally administered by-law enforcement system. The system can be customized to ensure that it will work practically and effectively for the municipality. For example, deciding where and when the screening officer will hear disputes and how the disputes will be conducted, i.e. in person, by phone, online, etc., are decisions that a municipality must make when developing an implementation by-law.

Municipalities are also able to share services or resources to jointly administer the administrative penalty scheme under *The MBEA*. This can include sharing the services of a by-law enforcement officer or a screening officer and coordinating adjudication hearings together (i.e. sharing a facility for adjudication hearings).

Two sample implementation by-laws have been developed by AMM to assist municipalities with the steps necessary to implement an administrative penalty scheme. One sample by-law, attached as Appendix 2, is for general by-law enforcement (excluding parking) and the other, attached as Appendix 3, is for parking and general by-law enforcement. These sample by-laws are also available on AMM's website at: www.amm.mb.ca.

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(3) By-law Enforcement Process under *The MBEA*

Step 1: Determine if Further Action is Required

Prior to undertaking formal enforcement proceedings, a discussion between the by-law enforcement officer and the person who may be in contravention of a by-law, or a ‘friendly’ warning letter may be sufficient.

Step 2: By-law Enforcement Officer Delivers a Penalty Notice

The by-law enforcement officer issues a penalty notice if they determine that a contravention of a by-law has occurred. The notice can be delivered in person, by mail, or by leaving it on a vehicle if it is a parking offence.

The penalty notice must include, *The MBEA* (s. 6(2)):

- the alleged by-law contravention
- the amount of the penalty, how to pay it, and what happens if the individual does not pay; and
- how to dispute the penalty notice

Note: For parking offences, a municipality has authority to obtain the name and address of the registered owner of a vehicle from Manitoba Public Insurance (MPI) Corporation, *The Drivers and Vehicles Act* s. 135(1.1). A municipality must make arrangements with MPI to acquire this information.

An individual can either pay the penalty or request a review with a screening officer within the fixed period of time set out in the municipality’s *MBEA Implementation By-law* (must be at least 30 days after the notice was received).

Step 3: Municipality Delivers Final Notice

If the person does not respond after this time period, the **municipality** must deliver a final notice. The person has 30 days after the delivery of the final notice to respond by either paying or requesting a review by the screening officer.

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If no action is taken after the 30 day period, the penalty becomes due and payable and the municipality may take steps to collect the outstanding amount, *The MBEA Act s. 22, 23 and 24*.

See Page 7.2.9 for further information about collecting outstanding penalties.

Step 4: Screening Officer (Review and Decision)

A person that chooses to dispute a penalty notice may do so by requesting a review by the screening officer in the manner and to the address set out in the penalty notice.

A review will be conducted as per the process set out in the municipality's implementation by-law (i.e. in person, online, and/or by telephone). The municipality cannot charge a fee for a screening officer review.

The screening officer will conduct the hearing and make a decision. A screening officer has authority under *The MBEA Act, s. 11(1)* to:

- confirm the penalty
- cancel the penalty, if they believe the contravention did not occur, or
- cancel the penalty, if the information on the penalty notice is incorrect.

If authorized by a municipality's implementation by-law, a screening officer may also:

- enter into a compliance agreement
- reduce the amount of the penalty on grounds established by by-law, or
- cancel the penalty notice on grounds established by by-law.

Compliance Agreements

A compliance agreement can be entered into for by-law contraventions that are designated in the municipality's MBEA Implementation By-law as contraventions that may be dealt with by a compliance agreement. In the agreement, the person who receives the penalty notice acknowledges that the contravention occurred and agrees in writing to take the agreed upon action to rectify it. If the person fulfills the actions set out in the agreement, the penalty for the contravention is waived. For example, the compliance agreement may be for the person to remove the derelict vehicle from their property within 14 days rather than pay the penalty.

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If the action agreed to in the compliance agreement is not taken, the screening officer may end the agreement and notify the person by regular mail that the agreement is ended. The notice is deemed to have been received 7 days after it is mailed. When the notice is received the person may pay the administrative penalty set out in the penalty notice or request an adjudication hearing, *The MBEA Act s. 12(5)* and *s. 13*. If the person does neither, the penalty is immediately due and payable to the municipality, *The MBEA Act s. 13(2)*.

Step 5: Adjudication Hearing

If a person is not satisfied with the decision of a screening officer, he/she may request a review of the screening officer's decision by an adjudicator. The adjudication hearing is organized by the municipality by contacting the Chief Adjudicator. The municipality must coordinate the time and place of the adjudication and must contact the person to let them know when the hearing will be held. The hearing may be in person, by telephone or in writing, including by fax or e-mail or through electronic means (video, audio, etc.).

Adjudicators will charge the municipality \$200.00 per half-day sitting and \$400.00 per full-day sitting. Each municipality must also pay an administration fee of \$10.00 per adjudication review (up to a maximum of \$40 for a 24-hour period) as set out in *The MBEA Regulation 116/2016*.

The municipality can charge a fee for an adjudication hearing, up to a maximum of \$25, *The MBEA s. 3(3)(e)*. The fee must be reimbursed if the adjudicator decides the person was successful in the adjudication, *The MBEA s. 21(2)*.

The adjudicator will review the information in the penalty notice, review any additional documents that are submitted and hear from the person who requested the hearing. The adjudicator can also choose to hear from witnesses.

After the hearing the adjudicators will decide whether to uphold, reduce or cancel the penalty. Penalties may be cancelled:

- if the contravention did not occur;
- if the information in the penalty notice is not correct; and
- on any other grounds that are established by by-law.

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The decision of the adjudicator is final and not open to an appeal.

Step 6: Failure to Collect Payment

Outstanding penalties under *The MBEA* cannot be added to property taxes. The next step for municipalities to collect payments may be through a collection agency. A municipality also has the authority to file a certificate for the amount payable with the Court of Queen’s Bench.

A certificate is enforceable as a judgment of the Court, *The MBEA s. 23(1)*. A court judgment can be enforced as a lien on real or personal property (i.e. land, vehicle, etc.) owned by the individual, *The MBEA s. 24*. A certificate can be filed at the Land Titles office against real property registered in the name of the violator. Once a certificate is filed against a property it cannot be sold until the penalty is paid to the municipality.

Note: A guide to *The Municipal By-law Enforcement Act* developed by the Department of Justice is available on Manitoba Municipalities Online (MMO) and on the AMM website at:

<http://www.amm.mb.ca/download/guide/A%20guide%20to%20the%20municipal%20bylaw%20enforcement%20act.pdf>

(4) By-law Enforcement Process under *The Municipal Act*

Municipalities have broad enforcement powers under *The Municipal Act*. This includes the authority and to undertake “self-help” enforcement measures, such as seizing, removing and impounding, issuing orders to remedy a by-law contravention and taking action to remedy a contravention.

A designated officer of the municipality has the authority to enforce by-laws under *The Municipal Act*. These positions must be created as designated officer positions in the by-law and the by-law must provide that the positions are authorized to enforce the municipality’s by-laws. Designated office positions may include the By-law Enforcement Officer, Chief Administrative Officer (CAO) Building Inspector or any position that is established as a designated officer position.

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Step 1: Determine if Further Action is Required

Prior to undertaking formal enforcement proceedings, a discussion between the designated officer and the person who may be in contravention of a by-law, or a ‘friendly’ warning letter may be sufficient.

Step 2: Inspections

The designated officer has the authority to conduct inspections to determine whether a by-law contravention has occurred and to determine what must be done to address the contravention (i.e. issue an order to remedy a contravention, seize a derelict vehicle, remove a dangerous animal, etc.). The designated officer also may require that anything be produced to assist with the inspection, including requiring copies of documents related to the inspection be provided *The Municipal Act, s.239(1)*.

The designated officer must give reasonable notice to the property owner or occupier that they will be inspecting the property. The notice must include the reason for the inspection and the date and time the inspection will occur. The inspection must also be done at a reasonable time at day. For example, it is not reasonable to inspect a property in the middle of the night unless there is an emergency situation where action must be taken immediately.

Designated officers undertaking an inspection must carry and be able to produce identification proving that they are a designated officer of the municipality during an inspection.

If attempts to gain voluntary access to the property are refused, the municipality may apply to the court for an order to allow access, *The Municipal Act, s. 240*. In an emergency, or in extraordinary circumstances, the designated officer does not need to give reasonable notice and may enter at any time to make an inspection.

Step 3: Issuing an Order to Remedy a Contravention

An Order to Remedy a Contravention is a written order, issued by the designated officer, requiring the person who is in contravention of a by-law to take steps to remedy the contravention, s. 242 *The Municipal Act*. For example, a property owner who is in violation of a derelict vehicle or unsightly property by-law may be issued an order to remove the derelict vehicle or to clean up the property.

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An Order can direct a person to:

- Stop what they are doing or the way they are doing it; or
- Take action to remedy the contravention, including the demolition or removal of a structure that has been erected or placed “illegally”.

An order must:

- State a timeframe for the person to comply with the actions set out in the agreement. It is important for the timeframe to be reasonable. For example, if the order is to tear down a dangerous structure on their property, the owner must be given reasonable time to get the work done.
- State what further action the municipality will take if compliance does not occur within the timeframe required.

Step 4: Requesting a Review of an Order:

A person who receives an Order to remedy a contravention from a designated officer may request Council to review it. Their request must be made in writing to Council within 14 days of receiving the order.

Council may confirm, vary or cancel the Order s. 244. Tips for conducting appeals are attached as Appendix 1.

Step 5: Action to Remedy Contraventions (Self-help Procedures)

If a person does not comply with an Order to remedy a contravention, the municipality can take action to remedy the contravention. Municipalities have this authority under s. 242, 245(1), 245(2) and s. 246(2) of *The Municipal Act*. These actions are often referred to as “self-help” procedures.

The costs of an action taken by the municipality to remedy a contravention are payable to the municipality by the person who was issued the order and did not comply. The municipality will issue an invoice for the cost of the work and the person is responsible to pay it.

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If the invoice isn't paid the amount owing can be added to property taxes if the violation pertains directly to the property and the by-law includes provisions that state the costs may be added to property taxes if unpaid. s. 236(1)(iii).

Emergencies

Municipalities have the authority to take immediate action to address an emergency and may add these costs to property taxes if unpaid, even if the municipality does not have a by-law authorizing it s. 247(5).

Step 6: Provincial Court

By-law contraventions that are enforced under *The Municipal Act* can be taken to Provincial Court for decision if necessary. The person in contravention of the by-law may be required on summary conviction to undertake steps to resolve the contravention, to pay a fine, and/or to pay the municipality for costs it incurred to rectify the contravention.

Municipalities may want to contact a lawyer if they are considering referring a by-law offence to the courts for prosecution.

If a by-law includes a violation that is enforced under *The Municipal By-law Enforcement Act*, a prosecution to Provincial Court is **not** an option.

Charging a Person with an Offence

Municipalities have the authority, under *The Municipal Act*, to charge a person with an offence for violating a municipal by-law if the by-law that is being enforced includes provisions for fines. The maximum fine allowed under *The Municipal Act* is \$1,000.00.

The offence is commenced by the municipality's designated officer either completing a common offence notice or swearing an information under *The Summary Convictions Act*. Once served the person may either pay the fine (admitting their guilt) or contest the offence by asking for a trial before a provincial judge.

The provincial judge will hear the trial, and if convicted the fine will be imposed on the person.

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Documentation

It is critical for municipalities to enforce its by-laws fairly and consistently and in accordance with legislation. A municipality can be taken to court if a person believes that a by-law is discriminatory, that council failed to meet a requirement of legislation, or that council acted in excess of its jurisdiction or in bad faith, s. 382(1) *The Municipal Act*.

It is important to maintain accurate historical records for by-law enforcement because the municipality will need this information if the matter goes to court. Municipalities should keep copies of correspondence with the person about the alleged by-law contravention, copies of notices sent, documentation of actions taken by the municipality, including time and date etc.

Tips:

- The designated officer should document all contact relating to the by-law enforcement matter, including telephone calls, e-mails, notes, photographs, etc.
- If property is occupied by a tenant, all correspondence, notices, and legal proceedings should also be sent to the owner by the same method that the occupier is notified.
- Consistent follow-up and a diary date system are necessary. Always be ready for the next step.

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(6) Examples of Common By-laws and Enforcement Provisions

Authority	Investigation	Enforcement
PARKING BY-LAW		
<p>To provide for the control of parking of vehicles.</p> <p><i>Authority to enact by-law:</i></p> <p>Highway Traffic Act S. 90(1) A traffic authority may make by-laws with respect to: (a) parking, stopping and standing of vehicles and bicycles</p> <p><i>Authority to enforce by-law:</i></p> <p>Municipal By-Law Enforcement Act S. 4(2) A by-law concerning the parking of vehicles may only be enforced by issuing a penalty notice under this Act, and may not be enforced by a proceeding under <i>The Summary Convictions Act</i>.</p>	<ul style="list-style-type: none"> ▪ An investigation is not usually conducted for this kind of offence. 	<p>Parking by-laws must be enforced by:</p> <ul style="list-style-type: none"> ✓ Penalty notice (<i>The Municipal By-law Enforcement Act</i>) <p>Disputes are managed locally by the municipality through the administrative penalty scheme and cannot be referred to court.</p>

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Authority	Investigation	Enforcement
NOISE BY-LAW		
<p>To provide for the control and regulation of noise.</p> <p><u>Authority to enact by-law:</u> Municipal Act S. 232(1) A council may pass by-laws for municipal purposes respecting the following: (c) subject to S. 233, activities or things in or on private property;</p> <p>S. 233: (d) activities or things that in the opinion of the council are or could become a nuisance, which may include noise.</p> <p><u>Authority to enforce by-law:</u> Municipal Act S. 232(1) A council may pass by-laws for municipal purposes: (o) the enforcement of by-laws S. 236(1)(b)(ii) providing for fines and penalties;</p> <p>OR:</p> <p>Municipal By-law Enforcement Act S. 3(1) A municipality may, in accordance with this Act, require administrative penalties to be paid</p> <p>S. 3(2)(a) ...if it first passes a by-law that does the following: (a) designates the by-law contravention that may be dealt with by a penalty notice.</p>	<p>▪ An investigation is not usually conducted for this kind of offence.</p>	<p>Noise by-laws can be enforced by:</p> <p>✓ Charging the person with an offence. <i>(The Municipal Act)</i></p> <p>Disputes are decided by the Courts.</p> <p>OR</p> <p>✓ Penalty notice <i>(The Municipal By-law Enforcement Act)</i></p> <p>Disputes are managed locally by the municipality through the administrative penalty scheme and cannot be referred to court.</p>

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Authority	Investigation	Enforcement
ANIMAL CONTROL BY-LAW		
<p>To provide for the control of wild and domestic animals and activities in relation to them, including sex, breed, size or weight.</p> <p><u>Authority to enact by-law:</u> Municipal Act S. 232(1) A council may pass by-laws for municipal purposes respecting the following: (k) wild and domestic animals and activities in relation to them, including by-laws differentiating on the basis of sex, breed, size or weight;</p> <p><u>Authority to enforce by-law:</u> Municipal Act S. 232(1) A council may pass by-laws for municipal purposes: (o) the enforcement of by-laws S. 236(1)(b)(ii) and (iv) providing for fines and penalties; seizing removing, impounding, animals S. 242(1) If a designated officer finds that a person is contravening a by-law, they may require the individual to remedy it by written order (compliance order).</p> <p>AND/OR:</p> <p>Municipal By-law Enforcement Act S. 3(1) A municipality may, in accordance with this Act, require administrative penalties to be paid</p> <p>S. 3(2)(a) ...if it first passes a by-law ...</p>	<p>Investigations are usually required to determine if the following offences have been committed:</p> <ul style="list-style-type: none"> ✓ Keeping or harbouring dogs and cats in excess of the maximum number permitted under a by-law without a valid kennel permit. ✓ Harbouring a wild animal or other restricted animal within the municipality. 	<p>Animal Control by-laws can be enforced by:</p> <ul style="list-style-type: none"> ✓ An Order to remedy a contravention (under <i>The Municipal Act</i>) For example, requiring an individual: <ul style="list-style-type: none"> ▪ To dispose of or voluntarily surrender dogs and cats in excess of the maximum number permitted under the by-law without a valid kennel permit. ▪ To dispose of or voluntarily surrender a wild animal or any other restricted animal. <p>AND/OR:</p> <p>Charging the person with an offence (under <i>The Municipal Act</i>) or a penalty notice (issued under <i>The MBEA</i>)</p>

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Authority	Investigation	Enforcement
UNSIGHTLY PROPERTY BY-LAW		
<p>To maintain property and to regulate nuisances, derelict, abandoned or unsightly property.</p> <p><u>Authority to enact by-law:</u> Municipal Act S. 232(1) A council may pass by-laws for municipal purposes respecting the following: (c) activities or things in or on private property;</p> <p>S.233 A by-law respecting activities or things in or on private property: (a) the requirement that land and improvements be kept and maintained in a safe and clean condition.</p> <p><u>Authority to enforce by-law:</u> Municipal Act S.232 (1) A council may pass by-laws for municipal purposes: (o) the enforcement of by-laws.</p> <p>S. 242(1) If a designated officer finds that a person is contravening a by-law, they may require the individual to remedy it by written order (compliance order).</p>	<p>Investigations are usually conducted to determine:</p> <ul style="list-style-type: none"> ▪ Whether property is not free and clear of such nuisances as: rubbish; unsafe structure(s); household appliances that are not in working condition; or overgrown grass and weeds. 	<p>Unsightly property by-laws can be enforced by:</p> <p>✓ An Order to remedy a contravention issued to require an individual to remove nuisances and maintain a safe and clean condition.</p> <p>A municipality may also take action to remediate unsafe structures/ excavations and unsightly property (s. 246(1)).</p>

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Appendix 1 – Tips for Hearing Appeals of Orders Issued to Remedy a By-law Contravention

Municipal council is required to hear applications to review the conditions of an Order to remedy a by-law contravention. A simple majority of council is sufficient to make up a quorum when reviewing Orders. Council's role is to hear all information and based on that information, make an impartial decision. That decision can include confirming the existing Order, varying the terms of the Order, or may include substituting or canceling an order.

It is recommended that Appeal Policies and Procedures be established which will set out how an appeal hearing will run. For reference, see Section 5 of this manual which sets out the practices and procedures of council. An appeal will come forward to a council meeting in open session. Any Appeal Policies and Procedures should be available to applicants prior to the hearing.

As municipal council is the adjudication body in these circumstances, members of a municipal council should be cautioned not to get actively involved in an enforcement situation. For example, council should be advised that if an individual issues a complaint, the individual should be directed to either the municipality's enforcement officer or CAO.

Following are tips that should be provided to council, to ensure the appeal proceedings are conducted in a professional and orderly manner:

Tips for Effective Adjudication:

- The chairperson (Mayor or Reeve) of the appeal hearing should maintain order and control of the hearing.
- Do not discuss the particulars of any appeal application with anyone before hearing the appeal.
- Listen patiently to all information; ask pertinent questions and reserve comments to the application being discussed.
- Try to focus the evidence only on matters relevant to the case in question; take notes.
- Remain impartial. It is possible that you know the applicant personally. The decisions made should be based on facts presented and not be prejudiced by any relationship with the applicant.
- Any comments or questions from councillors should be directed to the chairperson.

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Appendix 2 – MBEA Sample By-law Without Parking

Appendix 2 was developed by AMM to assist municipalities with preparing to implement an administrative penalty scheme. This sample by-law is also available on AMM's website at: www.amm.mb.ca.

A BY-LAW TO PROVIDE FOR AN ADMINISTRATIVE PENALTY SCHEME FOR GENERAL BY-LAW ENFORCEMENT

WHEREAS section 3(1) of the Municipal By-law Enforcement Act (“Act”) provides that a municipality may require that administrative penalties be paid in respect of the contravention of its by-laws;

AND WHEREAS Council for the R.M. of Manitoba (“Municipality”) deems it advisable in the public interest to provide for an administrative penalty scheme as an additional means of encouraging compliance with its by-laws;

NOW THEREFORE Council of the R.M. of Manitoba enacts as follows:

PURPOSE AND INTERPRETATION

1. The purpose of this by-law is to establish an administrative penalty scheme for the enforcement of certain by-law contraventions and an adjudication scheme to review screening officer decisions.

2. *The following definitions apply to this by-law: (add if necessary)*

3. This by-law contains the following Schedules:

Schedule A: By-law contraventions that may be dealt with by a penalty notice under the Act.

Schedule B: Form of penalty notice.

Schedule C: Form of final notice.

Schedule D: Screening officer remuneration and expenses.

Schedule E: By-law contraventions that may be dealt with by a compliance agreement.

BY-LAW CONTRAVENTIONS AND PENALTIES

4. The by-law contraventions described in Schedule A are hereby designated as by-law contraventions that may be dealt with by a penalty notice.

5. The administrative penalties (including discounted amounts) described in Schedule A for each contravention are hereby set.

6. The discounted amount as shown in Schedule A for the by-law contravention to which it relates may be paid as an administrative penalty if:

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- a. payment is made within 14 days after delivery of the penalty notice, and
 - b. no request is made for review by a screening officer.
7. A penalty notice shall be in the form of Schedule B.
 8. The period within which a person must pay the administrative penalty or request a review by a screening officer is hereby set at 30 days after delivery of the penalty notice.
 9. If, at the end of the period for responding to a penalty notice under section 8 of this by-law, a person to whom a penalty notice was delivered has not responded, the Municipality must deliver a final notice to the person in the form of Schedule C. A person to whom a final notice is delivered must, within 30 days after delivery, pay the administrative penalty or request a review by a screening officer.
 10. The Municipality must deliver penalty notices and final notices in the manner provided for in sections 9 and 22 of the Act and section 3 of the Municipal By-law Enforcement Regulation, and the date of delivery shall be determined in accordance with those sections. The giving of other notices or documents by the Municipality, a screening officer or an adjudicator is governed by sections 34 to 36 of this by-law. Periods within which affected persons must make payments or request a review or adjudication are determined under section 36 of this by-law.

SCREENING OFFICER

11. Council shall by resolution appoint one or more screening officers.
12. A member of council or of a council committee is not eligible to be appointed as a screening officer.
13. A screening officer who is not an employee of the Municipality must be paid remuneration and expenses as set out in Schedule D.

REVIEW BY SCREENING OFFICER

14. A request for review by a screening officer must be made in the manner set out in the penalty notice. When in writing the request must include a telephone number and/or email address, with an indication of the preferred means of communication with the screening officer to make arrangements for the review.
 15. In the case of contraventions described in Schedule E, a request for review may include an indication that the person is prepared to enter into a compliance agreement.
 16. Within 14 days after receiving the request, the screening officer must attempt to contact a person who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. The means of the review may be written submission, on the telephone or in person, at the option of the person who has made the request.
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17. If
 - a. the screening officer is unable to contact a person who has requested a review, or
 - b. the person without reasonable cause does not agree to a date and time or means of review, the screening officer must set a date and time for the review in person or by telephone. If the person fails to participate or appear the screening officer must review the penalty notice based on the information provided by the person in the request.
18. If having agreed to a date and time or means of review the person fails to participate in it, the screening officer must review the penalty notice based on the information provided by the person in the request.
19. On a review of a penalty notice, the screening officer may:
 - a. confirm the administrative penalty;
 - b. reduce the amount of the administrative penalty if satisfied that exceptional circumstances exist;
 - c. in the case of a contravention described in Schedule E, enter into a compliance agreement with the person on behalf of the Municipality; or
 - d. cancel the penalty notice if, in the screening officer's opinion,
 - i. the contravention did not occur as alleged, or
 - ii. the penalty notice does not comply with section 6(2) of the Act.
20. The screening officer must make a decision within 14 days after the review. After making the decision, the screening officer must give the affected person notice of the decision.
21. If the screening officer confirms or reduces the amount of the administrative penalty, the amount is due and payable within 14 days after receipt (or deemed receipt under section 35 of this by-law) of the decision of the screening officer, unless the person requests adjudication under section 27 of this by-law.

COMPLIANCE AGREEMENT

22. The by-law contraventions described in Schedule E are hereby designated as by-law contraventions that may be dealt with by a compliance agreement.
23. A compliance agreement must
 - a. describe the action to be taken to bring the person into compliance with the by-law,
 - b. state a date no later than 60 days after the date of the agreement by which the action must be completed, and
 - c. provide for inspection for the purpose of determining compliance with the agreement.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.22

Date Issued: January 2017

New:

Amendment: √

24. If the screening officer believes that a person who has entered into a compliance agreement has failed to comply with its terms, the screening officer may end the compliance agreement and give the person notice of that fact by regular mail. The notice is deemed to be received within seven days after the day it was mailed.
25. When a screening officer ends a compliance agreement, the person who entered into it may, within 14 days after receiving the notice under section 24 of this by-law
 - a. pay the administrative penalty set out in the penalty notice; or
 - b. request that the screening officer submit for adjudication the issue of whether the person complied with the terms of the agreement.

ADJUDICATION SCHEME

26. An adjudication scheme described in sections 14 to 21 of the Act is hereby established to allow a person to whom a penalty notice has been issued to:
 - a. request a review of a screening officer's decision to confirm or reduce the administrative penalty set out in the penalty notice;
 - b. request a determination of a dispute as to whether the terms of a compliance agreement were complied with.
27. Within 14 days after receipt (or deemed receipt under section 35 of this by-law) of the screening officer's decision, the person may request a review of the screening officer's decision by an adjudicator by notice in writing to the screening officer mailed or delivered to the municipal office accompanied by a \$25 adjudication fee.
28. Upon receipt of a request for adjudication and the payment of the adjudication fee, the screening officer must submit the request to the chief adjudicator appointed under the Act.
29. The selected adjudicator must attempt to contact a person who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. The person may be heard
 - a. by telephone or in writing, including by fax or e-mail; or
 - b. through the use of a video or audio link or other available electronic means.
30. If
 - a. the adjudicator is unable to contact a person who has requested a review,
 - b. the person without reasonable cause does not agree to a date and time or means of hearing, or
 - c. the person fails to appear or otherwise participate in the hearing, the adjudicator must order that the amount of the administrative penalty set by the screening officer or in the case of the ending of a compliance agreement, the administrative penalty set out in the penalty notice, is immediately due and payable to the Municipality.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.23

Date Issued: January 2017

New:

Amendment: √

31. In addition to the powers of the adjudicator in making a decision set out in section 19(2) of the Act, the adjudicator may reduce the amount of the administrative penalty if satisfied that exceptional circumstances exist, in which case the reduced penalty is immediately due and payable to the Municipality.

CHIEF ADMINISTRATIVE OFFICER'S AUTHORITY

32. The Chief Administrative Officer is authorized to do the following:
- a. pay invoices
 - i. of the screening officer for remuneration and expenses under Schedule D;
 - ii. for the costs and administration of the adjudication scheme under section 21(1) of the Act;
 - iii. for the remuneration and expenses of adjudicators;
 - b. refund an adjudication fee ordered to be refunded by an adjudicator.
 - c. issue a certificate in respect of an unpaid penalty under section 23(1) of the Act and file the certificate in the Court of Queen's Bench.

DISCLOSURE OF INFORMATION

33. Upon receipt of an adjudicator's decision, the Chief Administrative Officer must make the decision available to the public.

NOTICES AND TIME PERIODS

34. Where a notice or other document (other than a penalty or final notice) referred to in this by-law is required to be given to a person (other than to the Municipality), the notice or other document may be given
- a. by delivering it personally to the person;
 - b. by mailing a copy by regular mail or delivering a copy to the last known address of the person named in the penalty notice; or
 - c. if the person is a corporation,
 - i. by mailing a copy by regular mail to the corporation's registered office;
 - ii. by mailing a copy by regular mail or delivering a copy to an officer or director of the corporation;
 - iii. by delivering it personally to someone who appears to be in charge at a place where the corporation carries on business; or
 - d. if the person has used e-mail in communication, by sending it to the e-mail address provided by or shown in the communication from the person.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION	
Subject: 2 – By-law Enforcement and Compliance	
Page: 7.2.24	Date Issued: January 2017
New:	Amendment: √

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35. A notice or other document given under section 34 that is
- a. delivered personally is deemed to have been given or delivered on the day it was delivered;
 - b. mailed is deemed to have been given or delivered to the person seven days after the day it was mailed;
 - c. sent by email is deemed to have been given or delivered two days after the day it was sent.
36. In determining the time within which a person must make a payment or request review or adjudication,
- a. the time does not include the first day of the period;
 - b. a period that would otherwise expire on a holiday is extended to include the next day that is not a holiday;
 - c. a period that would otherwise expire on a day when the municipal office is not open is extended to include the next day the municipal office is open.

AMENDMENTS TO OTHER MUNICIPAL BY-LAWS

This Part makes necessary amendments if required to the enforcement provisions of by-laws that contain designated violations and to the municipality's enforcement by-law (if there is one.)

TRANSITIONAL

37. This by-law shall come into force on _____.
38. Prosecutions of designated by-law contraventions that were started before this by-law comes into force shall continue under the procedures of the former by-laws and the Summary Convictions Act.

DONE AND PASSED by Council of the R.M. of Manitoba, in open meeting, duly assembled, this ____ day of _____ 201__.

Municipal Act Procedures Manual

PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.25

Date Issued: January 2017

New:

Amendment: √

Appendix 3 – MBEA Sample By-law With Parking

Appendix 3 was developed by AMM to assist municipalities with preparing to implement an administrative penalty scheme. This sample by-law is also available on AMM's website at: www.amm.mb.ca.

A BY-LAW TO PROVIDE FOR AN ADMINISTRATIVE PENALTY SCHEME FOR PARKING AND GENERAL BY-LAW ENFORCEMENT

WHEREAS section 3(1) of the Municipal By-law Enforcement Act (“Act”) provides that a municipality may require that administrative penalties be paid in respect of the contravention of its by-laws;

AND WHEREAS the Act provides that municipal by-laws respecting parking may only be enforced by issuing penalty notices under that Act and may not be enforced by a proceeding under the Summary Convictions Act;

AND WHEREAS Council for the R.M. of Manitoba (“Municipality”) deems it advisable in the public interest to provide for an administrative penalty scheme as an additional means of encouraging compliance with its by-laws;

NOW THEREFORE Council of the R.M. of Manitoba enacts as follows:

PURPOSE AND INTERPRETATION

1. The purpose of this by-law is to establish an administrative penalty scheme for the enforcement of parking and other by-law contraventions and an adjudication scheme to review screening officer decisions.
2. *The following definitions apply to this by-law: (add if necessary)*
3. This by-law contains the following Schedules:

Schedule A: By-law contraventions that may be dealt with by a penalty notice under the Act.

Schedule B: Forms of penalty notices for parking contraventions and other by-law contraventions.

Schedule C: Form of final notice.

Schedule D: Screening officer remuneration and expenses.

Schedule E: By-law contraventions that may be dealt with by a compliance agreement.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.26

Date Issued: January 2017

New:

Amendment: √

BY-LAW CONTRAVENTIONS AND PENALTIES

4. The by-law contraventions described in Schedule A are hereby designated as by-law contraventions that may be dealt with by a penalty notice.
5. The administrative penalties (including discounted amounts) described in Schedule A for each contravention are hereby set.
6. The discounted amount as shown in Schedule A for the by-law contravention to which it relates may be paid as an administrative penalty if:
 - a. payment is made within 14 days after delivery of the penalty notice, and
 - b. no request is made for review by a screening officer.
7. A penalty notice shall be in the form set out in Schedule B.
8. The period within which a person must pay the administrative penalty or request a review by a screening officer is hereby set at 30 days after delivery of the penalty notice.
9. If, at the end of the period for responding to a penalty notice under section 8 of this by-law, a person to whom a penalty notice was delivered has not responded, the Municipality must deliver a final notice to the person in the form of Schedule C. A person to whom a final notice is delivered must, within 30 days after delivery, pay the administrative penalty or request a review by a screening officer.
10. The Municipality must deliver penalty notices and final notices in the manner provided for in sections 9 and 22 of the Act and section 3 of the Municipal By-law Enforcement Regulation, and the date of delivery shall be determined in accordance with those sections. The giving of other notices or documents by the Municipality, a screening officer or an adjudicator is governed by sections 34 to 36 of this by-law. Periods within which affected persons must make payments or request a review or adjudication are determined under section 36 of this by-law.

SCREENING OFFICER

11. Council shall by resolution appoint one or more screening officers.
12. A member of council or of a council committee is not eligible to be appointed as a screening officer.
13. A screening officer who is not an employee of the Municipality must be paid remuneration and expenses as set out in Schedule D.

REVIEW BY SCREENING OFFICER

14. A request for review by a screening officer must be made in the manner set out in the penalty notice. When in writing the request must include a telephone number and/or email address, with an indication of the preferred means of communication with the screening officer to make arrangements for the review.
15. In the case of contraventions described in Schedule E, a request for review may include an indication that the person is prepared to enter into a compliance agreement.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

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Date Issued: January 2017

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Amendment: √

16. Within 14 days after receiving the request, the screening officer must attempt to contact a person who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. The means of the review may be written submission, on the telephone or in person, at the option of the person who has made the request.
17. If
 - a. the screening officer is unable to contact a person who has requested a review, or
 - b. the person without reasonable cause does not agree to a date and time or means of review, the screening officer must set a date and time for the review in person or by telephone. If the person fails to participate or appear the screening officer must review the penalty notice based on the information provided by the person in the request.
18. If having agreed to a date and time or means of review the person fails to participate in it, the screening officer must review the penalty notice based on the information provided by the person in the request.
19. On a review of a penalty notice, the screening officer may:
 - a. confirm the administrative penalty;
 - b. reduce the amount of the administrative penalty if satisfied that exceptional circumstances exist;
 - c. in the case of a contravention described in Schedule E, enter into a compliance agreement with the person on behalf of the Municipality; or
 - d. cancel the penalty notice if, in the screening officer's opinion,
 - i. the contravention did not occur as alleged,
 - ii. the penalty notice does not comply with section 6(2) of the Act, or
 - iii. in the case of a parking contravention the vehicle owner can show
 1. the vehicle was stolen or otherwise being used without the owner's permission at the time of the contravention,
 2. the contravention was the result of a medical emergency or was necessary in order to address immediate health or safety concerns, or
 3. both that the contravention was a result of a mechanical problem and that the problem reasonably prevented the person in control of the vehicle at the time of the contravention from complying with the by-law despite exercising due diligence in attempting to comply.
20. The screening officer must make a decision in writing within 14 days after the review. After making the decision, the screening officer must give the affected person notice of the decision.

Municipal Act Procedures Manual

PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.28

Date Issued: January 2017

New:

Amendment: √

21. If the screening officer confirms or reduces the amount of the administrative penalty, the amount is due and payable within 14 days after receipt (or deemed receipt under section 35 of this by-law) of the decision of the screening officer, unless the person requests adjudication under section 27 of this by-law.

COMPLIANCE AGREEMENT

22. The by-law contraventions described in Schedule E are hereby designated as by-law contraventions that may be dealt with by a compliance agreement.
23. A compliance agreement must
- describe the action to be taken to bring the person into compliance with the by-law,
 - state a date no later than 60 days after the date of the agreement by which the action must be completed, and
 - provide for inspection for the purpose of determining compliance with the agreement.
24. If the screening officer believes that a person who has entered into a compliance agreement has failed to comply with its terms, the screening officer may end the compliance agreement and give the person notice of that fact by regular mail. The notice is deemed to be received within seven days after the day it was mailed.
25. When a screening officer ends a compliance agreement, the person who entered into it may, within 14 days after receiving the notice under section 24 of this by-law
- pay the administrative penalty set out in the penalty notice; or
 - request that the screening officer submit for adjudication the issue of whether the person complied with the terms of the agreement.

ADJUDICATION SCHEME

26. An adjudication scheme described in sections 14 to 21 of the Act is hereby established to allow a person to whom a penalty notice has been issued to:
- request a review of a screening officer's decision to confirm or reduce the administrative penalty set out in the penalty notice;
 - request a determination of a dispute as whether the terms of a compliance agreement were complied with.
27. Within 14 days after receipt (or deemed receipt under section 35 of this by-law) of the screening officer's decision, the person may request a review of the screening officer's decision by an adjudicator by notice in writing to the screening officer mailed or delivered to the municipal office accompanied by a \$25 adjudication fee.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.29

Date Issued: January 2017

New:

Amendment: √

28. Upon receipt of a request for adjudication and the payment of the adjudication fee, the screening officer must submit the request to the chief adjudicator appointed under the Act.
29. The selected adjudicator must attempt to contact a person who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. The person may be heard
 - a. by telephone or in writing, including by fax or e-mail; or
 - b. through the use of a video or audio link or other available electronic means.
30. If
 - a. the adjudicator is unable to contact a person who has requested a review,
 - b. the person without reasonable cause does not agree to a date and time or means of hearing, or
 - c. the person fails to appear or otherwise participate in the hearing, the adjudicator must order that the amount of the administrative penalty set by the screening officer or in the case of the ending of a compliance agreement, the administrative penalty set out in the penalty notice, is immediately due and payable to the Municipality.
31. In addition to the powers of the adjudicator in making a decision set out in section 19(2) of the Act, the adjudicator may cancel the penalty notice on the grounds set out in section 19d.iii of this bylaw and may reduce the amount of the administrative penalty if satisfied that exceptional circumstances exist, in which case the reduced penalty is immediately due and payable to the Municipality.

CHIEF ADMINISTRATIVE OFFICER'S AUTHORITY

32. The Chief Administrative Officer is authorized to do the following:
 - a. pay invoices
 - i. of the screening officer for remuneration and expenses under Schedule D;
 - ii. for the costs and administration of the adjudication scheme under section 21(1) of the Act;
 - iii. for the remuneration and expenses of adjudicators;
 - b. refund an adjudication fee ordered to be refunded by an adjudicator.
 - c. issue a certificate in respect of an unpaid penalty under section 23(1) of the Act and file the certificate in the Court of Queen's Bench.

DISCLOSURE OF INFORMATION

33. Upon receipt of an adjudicator's decision, the Chief Administrative Officer must make the decision available to the public.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.30

Date Issued: January 2017

New:

Amendment: √

NOTICES AND TIME PERIODS

34. Where a notice or other document (other than a penalty or final notice) referred to in this by-law is required to be given to a person (other than to the Municipality), the notice or other document may be given
- a. by delivering it personally to the person;
 - b. by mailing a copy by regular mail or delivering a copy
 - i. if the notice or document relates to a parking contravention, to the address of the vehicle owner indicated in the records of the Registrar of Motor Vehicles;
 - ii. to the last known address of the person named in the penalty notice; or
 - c. if the person is a corporation,
 - i. by mailing a copy by regular mail to the corporation's registered office;
 - ii. by mailing a copy by regular mail or delivering a copy to an officer or director of the corporation;
 - iii. by delivering it personally to someone who appears to be in charge at a place where the corporation carries on business; or
 - d. if the person has used e-mail in communication, by sending it to the e-mail address provided by or shown in the communication from the person.
35. A notice or other document given under section 34 that is
- a. delivered personally is deemed to have been given or delivered on the day it was delivered;
 - b. mailed is deemed to have been given or delivered to the person seven days after the day it was mailed;
 - c. sent by email is deemed to have been given or delivered two days after the day it was sent.
36. In determining the time within which a person must make a payment or request review or adjudication,
- a. the time does not include the first day of the period;
 - b. a period that would otherwise expire on a holiday is extended to include the next day that is not a holiday;
 - c. a period that would otherwise expire on a day when the municipal office is not open is extended to include the next day the municipal office is open.

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PART: 7 – BY-LAWS: GENERAL JURISDICTION

Subject: 2 – By-law Enforcement and Compliance

Page: 7.2.31

Date Issued: January 2017

New:

Amendment: √

AMENDMENTS TO OTHER MUNICIPAL BY-LAWS

This Part makes necessary amendments if required to the enforcement provisions of by-laws that contain designated violations and to the municipality's enforcement by-law (if there is one.)

TRANSITIONAL

37. This by-law shall come into force on _____.
38. Prosecutions of designated by-law contraventions that were started before this by-law comes into force shall continue under the procedures of the former by-laws and the Summary Convictions Act.

DONE AND PASSED by Council of the R.M. of Manitoba, in open meeting, duly assembled, this ____ day of _____ 201__.

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS

Subject: 1 – Economic Development

Page: 8.1.1

Date Issued: April 2005

New:

Amendment: √

8.1 Economic Development

(1) Legal Requirements

Section 258 sets out council's authority for economic development within the municipality.

Council may encourage economic development:

- in any manner the council considers appropriate.
- by granting money for economic development, as long as the money is not used to directly or indirectly reduce or reimburse municipal or school taxes.

(2) Economic Development by a Municipality

The primary goal of economic development activities is to encourage the development and enhance the sustainability of business and industry within the municipality or a region. Council can support economic development by:

- developing and adopting a strategic plan for economic development – a strategic plan is a blueprint that council and those involved in economic development can use to guide their economic development activities.
- entering into agreements that will support economic development within and outside the municipality – regional strength and competitiveness has become key to successful economic development.

Strategic Plan for Economic Development

A strategic plan is a proactive approach to economic development that:

- establishes a framework that guides council to an economic vision for the municipality
- involves the appraisal of opportunities, resources and constraints.
- sets out short and long term economic development goals and defines ways to achieve those goals.

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Subject: 1 – Economic Development	
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New:	Amendment: √

Economic development priorities should reflect council's priorities. *The Municipal Act* enables council to implement economic development priorities by providing authority not only to plan for economic development, but to make grants to support economic development. For example, if supporting affordable housing has been identified in a strategic planning process as a priority, municipalities can grant funding to support a housing project.

To mobilize and focus local resources on the objectives and goals of the community, council should involve other community economic development organizations when developing the municipality's strategic plan.

Other groups that may be consulted include:

- community development corporations
- chambers of commerce
- agricultural societies
- community round tables
- entrepreneurs, etc.

For assistance in developing and facilitating an economic development strategic plan, municipalities may contact:

- A Rural Economic Development Specialist, Manitoba Growth, Enterprise and Trade, 1129 Queens Avenue, Brandon MB, R7A 1L9, Phone: (204) 573-0889.
- An economic development agency, such as a Regional Development Corporation or Community Futures Development Corporation.
- A private consultant.

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS	
Subject: 1 – Economic Development	
Page: 8.1.3	Date Issued: January 2017
New:	Amendment: √

Economic Development Agreements

Council may enter into agreements with a person, an agency or other level of government, First Nations, or another municipality for the purposes of economic development.

Entering into a joint agreement for economic development has several benefits:

- combined strength through the pooling of expertise and resources
- a broader economic development perspective
- enhanced public accountability, through a broader community approach.

Municipalities are encouraged to explore the benefits of establishing a Community Development Corporation, whose membership includes municipalities and other community organizations. One of the greatest benefits of forming a Community Development Corporation is the ability of municipalities to give support to economic development, at arm's length. This helps to enhance the flexibility of the community to quickly respond to the needs of business and industry interested in the community.

For information about establishing a Community Development Corporation, contact:

Manitoba Growth, Enterprise and Trade
Rural Economic Development
1129 Queens Avenue, Brandon MB, R7A 1L9
Phone: (204) 573-0889

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS	
Subject: 2 – Tax Sharing Agreements	
Page: 8.2.1	Date Issued: April 2005
New:	Amendment: √

8.2 Tax Sharing Agreements

(1) Legal Requirements

Section 259 permits municipalities to enter into an agreement to share taxes or grants in lieu of taxes.

(2) What is Tax Sharing?

Tax sharing is an arrangement where one taxing jurisdiction contributes a portion of its tax revenues to another jurisdiction.

Tax sharing balances local autonomy with a regional approach to service provision and economic development. It can be used as:

- part of a strategy to equitably share or support the provision of cost-effective services on a regional basis;
- part of a regional economic development strategy for attracting industry/business to the region, or
- an alternative to municipal boundary adjustment.

Tax sharing agreements recognize that a municipality's entitlement to tax revenue solely on the basis of a property's location within municipal boundaries does not always reflect the costs and benefits of a development and its impact on the delivery of municipal services. These costs and benefits can be balanced by redistributing some portion of municipal tax revenue between two or more partners.

(3) Why Consider Tax Sharing?

There are two main reasons to consider tax sharing:

- 1) to deal with “spillover effects” arising from development; and
- 2) to avoid fiscal disparities between municipalities (and potential “tax competition”).

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS	
Subject: 2 – Tax Sharing Agreements	
Page: 8.2.2	Date Issued: April 2005
New:	Amendment: √

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- “Spillover effects” occur when all the costs and benefits of a development do not occur within the municipality. Development in one municipality can result in additional costs in another municipality (for example, to provide roads, recreational and other services of regional benefit) as well as additional benefits (for example, increased residential development).
 - Fiscal disparity is an imbalance between the revenue raising capacity of a government relative to its service responsibilities. A limited tax base together with high service responsibilities can result in relatively high tax rates. Fiscal disparity can result in tax competition (tax shopping) where the decision of prospective developers on where to locate is unduly influenced by local tax rates.

Tax sharing agreements:

- ensure a fairer allocation of the costs and benefits between the affected municipalities
- compensate nearby municipalities for the increased costs that result from development, and
- recognize that some of the benefits arising from development are only possible as a result of the availability of services from another municipality or municipalities.

Property tax sharing agreements often accompany service sharing agreements, particularly in urban centered regions. Sharing future property tax revenue is an effective way to fairly distribute the financial benefits of development that is possible as a result of proximity to a fully serviced urban centre and/or access to services such as sewer and water.

A tax sharing agreement provides the added benefit of an improved relationship between municipalities working together for the good of the wider community.

(4) Tax Sharing in Practice

Tax sharing agreements can take two forms - tax base sharing or revenue sharing.

- 1) Tax base sharing involves making a portion of the tax base (property assessment) located in one municipality available to a tax sharing pool fund or to another municipality.

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PART: 8 – CORPORATE POWERS	
Subject: 2 – Tax Sharing Agreements	
Page: 8.2.3	Date Issued: April 2005
New:	Amendment: √

For example: Several municipalities in a region interested in working together to attract businesses to their region enter into a tax sharing agreement. The agreement provides for a percentage of municipal tax revenues realized from increased commercial assessment in any of the municipalities be contributed to a tax sharing pool and the remaining municipal tax revenue be retained by the host municipality to cover ongoing costs of service (i.e. 50% of increased tax revenue is put into a tax sharing pool and 50% is retained by the host municipality). The tax pool is used to further economic development in the region.

- 2) The revenue sharing approach provides for the sharing of municipal tax revenues generated from the specific properties involved in the tax sharing agreement.

For example: An industrial park is established in a rural municipality adjacent to the boundaries of an urban centre. The rural municipality is able to provide all of the servicing requirements except for water and sewer that the urban centre is willing to provide. The two municipalities enter into a tax sharing agreement where the municipal tax revenue generated by development of properties in the industrial park is shared on a percentage basis (i.e. 50% / 50% or 60% / 40% based on negotiations to reflect an equitable share of benefits vs. costs).

Visit the Association of Manitoba Municipalities website at www.amm.mb.ca and read about several tax sharing agreements that have been successfully implemented in Manitoba.

(5) **Considerations in a Tax Sharing Agreement**

Because costs and benefits will vary according to the circumstances involved, tax sharing agreements must be “custom made” to fit the situation.

Municipalities discussing a potential tax sharing agreement will need to consider:

- The properties that will be included in the agreement. The agreement could include:
 - a) all properties.
 - b) only certain properties such as industrial/business properties.
 - c) only a specific property, such as an agricultural processing plant.
 - d) all properties within a defined geographic area, such as a new residential area.

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS	
Subject: 2 – Tax Sharing Agreements	
Page: 8.2.4	Date Issued: April 2005
New:	Amendment: √

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- A formula that will provide a fair and reasonable distribution of tax benefits. Consideration should be given to the following points:
 - a) the municipality in which the development occurs should recover the costs of providing basic municipal services prior to any revenue sharing.
 - b) a municipality extending services to another municipality should be fairly compensated for the costs that result from providing the service.
 - c) potential sharing of the cost of improvements to roads and infrastructure within the area.
 - d) establishing a reserve to offset future costs of capital replacement (for example, a portion of annual revenue to reserve, before sharing).
 - The terms of the agreement which may include:
 - a) the date by which the money is to be paid, how, and if in installments.
 - b) how a party may initiate discussion to change the terms of an existing agreement.
 - c) a method for dispute resolution (for example, an arbitrator or mediator).
 - d) any other matter specific to the municipalities involved.
 - Specific taxes to be shared - Local improvement or special service taxes, which are raised for a specific municipal purpose, are not normally shared and therefore not usually included in the tax sharing agreement.
 - Any agreement, formula, or arrangement should be transparent, understandable and efficient to administer.

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS	
Subject: 3 – Grants, Loans, Tax Credits and Tax Increment Financing	
Page: 8.3.1	Date Issued: April 2005
New: √	Amendment:

8.3 Grants, Loans, Tax Credits and Tax Increment Financing

Financial Assistance Tools Available to Municipalities

Municipalities have legislative authority to provide financial assistance in the form of grants, loans and tax credits. These financial assistance “tools” can be used to support non-profit organizations, municipal and regional development corporations, or to provide incentives to individuals and organizations to undertake activities that address particular municipal objectives.

Recent legislative changes have provided enhanced flexibility for municipalities to establish financial assistance programs, including the ability to provide tax credits. These legislative changes also enable municipalities to use tax increment financing to fund a financial assistance program within a designated area of the municipality.

Not all financial assistance tools will be applicable to every municipality and municipalities must choose the tool that best meets their needs. Councils should first determine their objective and then decide on the most appropriate tool(s) to meet the objective.

(1) Grants to Non-Profit, Municipal and Regional Development Corporations

Sections 261(1) to 261(6) provides authority for municipalities to give grants to assist:

- a charitable or non-profit organization;
- another municipality;
- a local authority;
- a municipal participation corporation; or
- a regional development corporation

Municipalities may provide grants for specific projects or initiatives that benefit the whole or part of the municipality. Grants are best suited to one-time projects, such as to provide support to a non-profit group raising funds to purchase new playground equipment.

Municipal councils may also enter into agreements with regional development corporations to provide a grant. For example, municipalities could support economic development efforts within their region by providing a grant to hire an economic development officer.

Municipal Act Procedures Manual

PART: 8 – CORPORATE POWERS

Subject: 3 – Grants, Loans, Tax Credits and Tax Increment Financing

Page: 8.3.2

Date Issued: April 2005

New: √

Amendment:

Council may provide grants to non-profit groups, municipal organizations or regional development corporations by first passing a resolution, which would indicate the purpose, recipient, amount, and any conditions on the grant.

(2) Loans to Non-Profit and Municipal Participation Corporations

Section 180 provides municipalities with authority to make loans to non-profit organizations and to municipal participation corporations. Loans may be made for any purpose that Council determines will benefit the municipality.

Loans would be best suited to support major projects, such as the renovation or construction of a new facility serving the community (e.g. athletic facilities, cultural centre, senior's centre, etc.). Municipalities would need to evaluate each loan on a case-by-case basis, taking into account many factors, including the organization's ability to operate the facility and generate sufficient revenues to pay back the loan.

Council must first pass a by-law to provide a loan to a non-profit organization or municipal participation corporation. The by-law must set out:

- the amount of money being loaned and the purpose;
- the name of the organization or corporation to whom the loan is being made;
- the interest rate and terms of repayment; and
- the source of the money being loaned.

(3) Financial Assistance Programs - Grants or Tax Credits

Section 261.2 provides authority for municipalities to establish financial assistance programs for any purpose that Council determines appropriate.

A municipality can now establish grant and/or tax credit programs and provide support over a number of years, instead of being limited to one-time grants or loans. Council can also establish the eligibility criteria, terms, amounts, and any other conditions for providing financial assistance. Financial assistance programs can be used to target support to a specific property, or be applied more broadly to a number of properties, depending on the program criteria.

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PART: 8 – CORPORATE POWERS

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Page: 8.3.3

Date Issued: April 2005

New: ✓

Amendment:

Programs should address specific municipal objectives and be designed to encourage activities that would otherwise not occur in the absence of the program. For example, a municipality could establish a tax credit program to provide an incentive for new businesses to move into the community, supporting a municipality's efforts to promote economic growth.

Financial assistance programs must be established by by-law. Municipalities can design programs and set terms and conditions as they deem appropriate, including:

- types, locations or classes of premises eligible for financial assistance;
- amount of financial assistance;
- maximum annual financial assistance;
- types of renovations and costs that are eligible;
- timeframe that financial assistance will be provided;
- eligibility criteria for financial assistance; and
- any other matter that council deems necessary.

Tax Increment Financing (TIF)

Section 261.3 provides authority for municipalities to develop Tax Increment Financing (TIF) programs. The primary goal of TIF is to encourage redevelopment and revitalization within designated areas of a municipality that would not otherwise occur.

TIF would be of most interest to a municipality that wants to target support to address issues within a specific area. For example, TIF programs have been widely used in larger urban centers in the United States to encourage redevelopment of “blighted” neighbourhoods such as abandoned industrial areas. It would be of less interest to smaller urban and rural municipalities where circumstances are different and the need for redevelopment may not be focused in one specific area. TIF is not applicable in these situations and other programs may be more appropriate to meet the municipality's needs.

TIF is a method of funding a financial assistance program. It requires a municipality to designate a certain area as a TIF “zone”. Some or all of the incremental municipal taxes generated within the designated area over a defined period of time are placed in a TIF reserve fund.

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The reserve fund may be used to:

- fund a grant or tax credit program to encourage development or construction in the area;
- construct or maintain city services or utilities in the area;
- fund planning expenses, including surveys, legal costs, engineering costs, etc.;
- acquire land and prepare it for redevelopment; and,
- address any other matter as determined by council.

For example, a municipality that wants to encourage property owners to renovate vacant commercial and residential properties in an older neighbourhood may choose to designate the area as a TIF zone and provide grants or tax credits to property owners to encourage this type of development. Funds could also be used to rehabilitate municipal infrastructure, such as streets, sidewalk, street lighting and utilities to make the area more attractive to development.

Council must pass a by-law to establish a TIF program, which includes designating the TIF zone and the types and amount of financial assistance to be provided.

Appendix 1 provides additional information regarding the establishment of TIF programs.

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Increment Financing**

Page: 8.3.5

Date Issued: April 2005

New: √

Amendment:

Appendix 1 – Considerations for Establishing TIF Programs

How TIF Works

Council may establish a designated TIF zone for a defined period of time. Once the zone is identified, council must work with the Assessment Branch to determine the taxable assessed value of all property within the zone.

Municipal taxes generated on the assessed value of property at the point the TIF zone is established continue to flow into general revenues. As the assessed value of properties within the TIF zone increases, municipal taxes raised from the increased taxable assessment are diverted to a separate TIF reserve fund.

Increases in the assessed value of properties within the TIF zone result from:

- new development on vacant land where little or no tax was paid,
- improvements to existing properties,
- natural growth in the assessed value of existing properties which did not undergo redevelopment.

The TIF reserve fund can then be used to provide grants or tax credits to encourage development of property and/or to fund other municipal expenditures within the TIF zone.

School taxes are not included in the TIF reserve fund and would continue to flow to the respective school divisions (Special Levy) and Province (Education Support Levy).

Designating a TIF Zone

Council decides the location, size and length of time TIF zones are established. Care must be taken in defining the TIF zone, since the goal is to encourage investment in an area that would not otherwise occur without the TIF designation.

TIF zones must also be established for a sufficient length of time during which incremental tax revenues can be generated to encourage redevelopment. In the United States, TIF zones are typically created for 10 to 20 years. Once this timeframe has expired, the TIF program is ended and all municipal tax revenues from the former TIF zone are taken into general revenues.

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Financing of TIF Programs

There are two ways in which TIF programs are typically funded:

- *“Front-funded” Programs* – require the municipality to advance money into the TIF fund, either as a budgeted expenditure or by borrowing the required funds. Expenditures are made and the fund is replenished as incremental tax revenues are generated. Front-funding has the advantage of being able to “kick-start” projects in the TIF zone as a financing pool is already available.
- *“Pay-as-you go” Programs* – incremental tax revenues generated within the TIF zone are allowed to accumulate in the TIF fund. Once a pre-determined level is reached, the funds are then used to finance development. This is less risky than “front-funding” as expenditures are not made until sufficient funds are generated. It may, however take many years to generate sufficient funds to make expenditures, which can slow the pace of redevelopment.

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9.1 Access to Information / Retention of Records

(1) Access to Information

Citizens need access to information to understand how their municipalities operate – to know about the decisions of council, to be aware of the services and programs available and how they are delivered, and to understand how they can get answers to their questions.

Most municipal documents should be available to the public as a matter of course. To make the process for citizens to access information easier, municipalities should establish access to information policies that list the documents that citizens can immediately obtain if desired.

Municipalities are required to provide access to certain municipal documents and having these and other key documents readily available at the municipal office or posted on the municipality's website should minimize formal access to information requests under *The Freedom of Information and Protection of Privacy Act (FIPPA)*.

(2) Required Access

Citizens have immediate access to certain documents. Subsection 263(1) of *The Municipal Act*, and other legislation as noted below, sets out the municipal records that the Chief Administrative Officer (CAO) must, on request of a person, provide access to:

- assessment rolls
- financial plans (budgets)
- financial statements
- reports of the auditor
- the minutes of meetings of council and council committees (including a LUD committee), held in public
- by-laws and resolutions of council and resolutions of council committees (including a LUD committee)
- an Election Finance Statement filed by a registered candidate in an election
- a council member's Statement of Assets and Interests (*The Municipal Council Conflict of Interest Act*)
- a council member's Record of Disclosure during a meeting (*The Municipal Council Conflict of Interest Act*)
- a report of the Ombudsman received by council under clause 37(2)(b) of *The Ombudsman Act*.

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(3) Additional Access

Council should establish a comprehensive access to information policy to ensure additional municipal documents are readily available to citizens. Documents that should be included under the policy and provided to citizens as a matter of course include:

- council member indemnity and expense claim forms
- employee salaries
- invoices for accounts payable
- tender documents once awarded
- development agreements
- conditional use permits and variation orders

As a general rule, any document that is presented at an open council meeting should be available to the public. Refer to The Freedom of Information and Protection of Privacy Protection webpage on the Province of Manitoba website www.gov.mb.ca/chc/fippa/ for frequently asked questions and answers regarding specific municipal documents that citizens may have access to.

(4) The Freedom of Information and Protection of Privacy Act (FIPPA)

FIPPA applies to municipalities and other public bodies (such as school divisions, universities and regional health authorities) and provides citizens with the right to formally request access to records by filing an access to information request. The municipality must respond to the request within 30 days.

Under FIPPA, municipalities are required to provide access to documents unless there is a clear reason for keeping them confidential or they contain personal information (e.g. confidential information about a legal matter or an employee's personnel information).

In order to comply with FIPPA, council must appoint an Access and Privacy Officer (APO) who is responsible for the overall management of access to information and protection of privacy within the organization. The APO makes the final decisions of the municipality regarding disclosure of information, and is responsible to ensure that personal information is managed as required by the legislation.

For routine requests, the APO should release information without requiring a written access application. When a request for information is complex and/or will require preparation of

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large amounts of information, a formal access request will be necessary to both clarify the request and prepare an estimate of fees as appropriate.

(5) Access to Information and FIPPA Fees

Subsection 263(3) of *The Municipal Act* provides municipalities with the authority to set fees for providing access to information. The fees are set by by-law and must not exceed a comparable fee payable as per the Access and Privacy Regulation (64/98), under *The Freedom of Information and Protection of Privacy Act* as follows:

Search and Preparation Fees

A search and preparation fee may be charged where municipalities anticipate that resources will be required to obtain the requested document, for example, documents that have been archived. A search and preparation fee must not exceed a comparable fee under section 4 of the Access and Privacy Regulation, which provides:

- 4(1) An applicant shall pay a search and preparation fee to the public body whenever the public body estimates that search and preparation related to the application will take more than two hours.
- 4(2) The fee payable for search and preparation is \$15.00 for each half-hour in excess of two hours.
- 4(3) When calculating search and preparation time, a public body shall include time spent in severing any relevant record under subsection 7(2) of the Act, but shall not include time spent
 - (a) in connection with transferring an application to another public body under section 16 of the Act;
 - (b) preparing an estimate of fees under section 7;
 - (c) reviewing any relevant record to determine whether any of the exceptions to disclosure apply, prior to any severing of the record;
 - (d) copying a record supplied to an applicant; or
 - (e) preparing an explanation of a record under subsection 14(2) of the Act.

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Copying Fees

Copying fees are set out in section 5 of the Access and Privacy Regulation, which provides:

- 5(1) An applicant who is given a copy of a record shall pay the following copying fees to the public body:
- (a) 20 cents for each page for paper copies made by a photocopier or computer printer;
 - (b) 50 cents for each page for paper copies made from a micro printer;
 - (c) actual costs for any other method of providing copies.

Computer Programming and Data Processing Fees

Computer programming and data processing fees are permitted under section 6 of the Access and Privacy Regulation, which provides:

- 6 When a public body needs to use computer programming or incurs data processing costs in responding to an application, the applicant shall pay to the public body
- (a) \$10.00 for each fifteen minutes of internal programming or data processing; or
 - (b) the actual cost of external programming or data processing incurred by the public body.

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(6) Citizen Complaints Regarding Access to Information

A citizen who is denied access to a municipal document by the municipality can file a complaint with the Ombudsman. The Ombudsman may recommend that the municipality provide the document. Municipalities are expected to comply with the Ombudsman's recommendations.

If a municipality does not act on a recommendation made by the Ombudsman, the Ombudsman may refer the matter to the Information and Privacy Adjudicator. The Adjudicator is an officer of the Legislature who is appointed under FIPPA. As an officer of the Legislative Assembly, the Adjudicator is independent of both provincial and municipal governments. This additional level of independent review and complaint resolution is triggered by the Ombudsman if a public body (including a municipality) does not act on a recommendation made by the Ombudsman. The Ombudsman's request for a review by the Adjudicator must be made within 15 days after the Ombudsman receives the municipality's response or, if the municipality does not respond, within 15 days after the response deadline.

After completing a review the Adjudicator will issue a written order that is copied to the municipality, the complainant and to the Ombudsman. The order may:

- require the municipality to give a citizen access to all or part of the requested information;
- request that the municipality reconsider its decision; or
- confirm the municipality's access decision.

An application may be made to the Court of Queen's Bench by the municipality or the complainant for judicial review of an order made by the Adjudicator.

A citizen may appeal a municipality's decision regarding access to information to the Court only if a complaint has first been filed with the Ombudsman, the Ombudsman has provided a report about the complaint, and the Ombudsman has not asked the Adjudicator to review the complaint.

For more information about *The Freedom of Information and Protection of Privacy Act* please visit the FIPPA webpage on the Province of Manitoba website at www.gov.mb.ca/chc/fippa/. The site provides "Frequently Asked Questions" about FIPPA and provides access to the *FIPPA Local Government Bodies Guide*. If you require additional information contact The Information and Privacy Policy Secretariat at (204) 945-1252.

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(7) Retention of Municipal Records

The Retention and Disposition of Municipal Records Regulation (53/97) of *The Municipal Act*, describes the records commonly maintained by municipalities and sets out the minimum required retention period and disposition of each type of record. During the defined retention period for that record, access to the record must be given, within a reasonable time period, in accordance with the municipality's access to information policy and the requirements of FIPPA.

The Retention and Disposition of Municipal Records Regulation requires many municipal documents to be archived after the required retention period. For example, minutes must be retained for 10 years and then archived. An excerpt of the Regulation that details the minimum retention period and disposition of specific records is attached as Appendix 1.

(8) Archiving Municipal Records

Under the *Archives and Recordkeeping Act*, municipal records designated as archival may be transferred to the Archives of Manitoba following the end of the required retention period. The Archives will offer advice in preparing records for transfer, and in arranging for security microfilming of records where required. The CAO of the municipality should contact Government Records Office Access Services at the following address for more information:

Government Records Office
130 - 200 Vaughan Street, Winnipeg MB R3C 1T5
phone: (204) 945-3738
fax: (204) 948-2008
email: govrecs@gov.mb.ca

The Archives of Manitoba website at <http://www.gov.mb.ca/chc/archives/> has further information and forms required for archiving municipal government records.

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Appendix 1 - Excerpt From Regulation 53/97 – The Municipal Act

RECORDS RETENTION & DISPOSITION SCHEDULE

Item	Description of Record	Minimum Retention Period	Disposition
COUNCIL			
1	Minutes		
1.1(a)	• Original Minutes (not microfilmed)	10 years	Archive
1.1(b)	• Original Minutes (microfilmed)	None	Archive
1.1(c)	• Original Microfilm of Minutes	None	Archive
1.2	By-laws		
1.2(a)	• Original By-laws (not microfilmed)	20 years	Archive
1.2(b)	• Original By-laws (microfilmed)	None	Archive
1.2(c)	• Original Microfilm of By-laws	None	Archive
1.3	Committee Reports	10 years	Archive
1.4	List of Electors	4 years	Archive
1.5	Nomination Papers	Expiration of term	Destroy
1.6	Election Records	1 year after election	Destroy
1.7	Oath of office for members of council	Expiration of term	Destroy
1.8	Disclosure of assets and interests	6 years	Destroy
1.9	Election Appeals	1 years after appeal order	Destroy
1.10	Resolutions	1 years	Destroy
HUMAN RESOURCES			
2.1	Payroll Records		
2.1(a)	• Registers dating from time employees participated in Municipal Employees Benefits Board	10 years	Destroy
2.1(b)	• Registers relating to non-Municipal Employees Benefits Board participants	60 years	Destroy
2.1(c)	• Time sheets (bi-weekly)	1 year	Destroy
2.2	Employee files (includes applications, leaves for vacation, sickness, education, leaves of absence, performance appraisals, Workers Compensation Board claims)	1 years after cessation of employment or 6 years after dismissal	Destroy
2.3	Payroll administration (includes T4's, TD-1's)	6 years	Destroy
2.4	Grievance records	3 years after final decision	Destroy
2.5	Personnel administration (includes policy and procedure records, policy manual)	2 years or until superseded	Destroy
2.6	Competition and hiring records (includes application of unsuccessful candidates, competition records, and other supporting documents)	1 year	Destroy
3.1	Correspondence (routine correspondence of no continuing fiscal, legal or administrative value, including informational copies, letters of transmittal, invitations and cover letters, copies of minutes and reports received from non-profit or municipally funded organizations)	1 year	Destroy
3.2	Other administrative records		
3.2(a)	• Records management tracking files (inventories, disposition documentation)	Maintain indefinitely in office of origin	Destroy
3.2(b)	• General administrative records held by all operational divisions	Retain as required	Destroy

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New:

Amendment: ✓

Appendix 1 (cont'd) ...

Item	Description of Record	Minimum Retention Period	Disposition
ADMINISTRATION			
3.3	Administrative policies and procedures	Until superseded	Destroy
3.4	Insurance records		
3.4(a)	• Policies	Term + 1 year	Destroy
3.4(b)	• Claims	1 year after resolution	
3.5	Litigation records	6 years after settlement, judgement, discontinuance or dismissal	Destroy
3.6	Workplace, Safety and Health		
3.6(a)	• Workplace Hazardous Material Information System (WHMIS)	30 years	Destroy
3.6(b)	• All other records, including minutes and associated reports	Retention and disposition in accordance with appropriate federal or provincial requirements	
3.7	Tax Certificates	6 years	Destroy
FINANCIAL MANAGEMENT			
4.1	Accounts payable and receivable (includes requisitions, purchase orders, receipts, invoices, utility billings, meter readings, and other source documents)	6 years	Destroy
4.2	Banking Records	6 years	Destroy
4.3	Budget working papers	3 years	Destroy
4.4	Financial statements		
4.4(a)	• monthly	1 year	Destroy
4.4(b)	• annual statement	5 years	Destroy
4.4(c)	• annual report of auditor	5 years	Archive
4.5	Ledgers		
4.5(a)	• general	10 years	Archive
4.5(b)	• other (all subsidiary ledgers)	10 years	Destroy
4.6	Journals	10 years	Destroy
4.7	Debentures (includes coupons)	Term + 1 year	Destroy
4.8	Loans and cancelled notes	Term + 1 year	Destroy
4.9	Agreements (working copies)	Term + 1 year	Destroy
4.10	Investment records	Term + 1 year	Destroy
4.11	Tenders/quotes	3 years	Destroy
4.12	Liens	Term + 1 year	Destroy
LICENSING / PERMITS			
5.1	Permits (buildings, utilities, occupancy, plumbing and electrical, including inspection reports and all supporting documents)	Lifetime of building + 1 year	Destroy
5.2	Licences (bicycle, animal, business etc., including applications and any supporting documents)	Term + 1 year	Destroy
WORKS / OPERATIONS			
6.1	Operations activity reports	5 years	Destroy
6.2	Capital project records		
6.2(a)	• As-built drawings	Lifetime of facility	Destroy
6.2(b)	• All other project records	1 year following project completion	Destroy
6.3	Equipment Records (includes acquisitions, warranties, maintenance and repairs)	Lifetime of Unit	Destroy

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Appendix 1 (cont'd) ...

Item	Description of Record	Minimum Retention Period	Disposition
PARKS AND RECREATION			
7.1	Facilities maintenance records	5 years	Destroy
7.2	Facilities operations records (includes user contracts/rates, staffing records, programming records)	2 years	Destroy
7.3	Capital project records	Lifetime of facility	Destroy
7.3(a)	• As-built drawings		Destroy
7.3(b)	• All other project records	1 year following project completion	Destroy
PROPERTY MANAGEMENT			
8.1	Property titles	Until title transferred	N/A
8.2	Land ledger sheets	Until property transferred	Destroy
8.3	Easement agreement	Term + 1 year	Destroy
8.4	Leasing records (copy of lease and support documents)	Term + 1 year	Destroy
8.5	Registered plans	Until superseded	Destroy
CEMETERY ADMINISTRATION			
9.1	Site plans / Plot Register / Index		
9.1(a)	• working copy	N/A	N/A
9.1(b)	• security copy	Transfer upon preparation	Archive
9.2	Copies of burial or exhumation permits	1 year	Destroy
ENVIRONMENTAL CONTROL			
10.1	Operating Licences or Permits (lagoon, water treatment, waste disposal grounds, including application for environmental control licences and all supporting documents, hearing records and technical reports)	Lifetime of facility	Archive
10.2	Site monitoring records	Until site closed and requirements cease	Destroy
TRANSPORTATION			
11.1	Local Transit		
11.1(a)	• Capital projects (acquisition or as-built records)	Lifetime of facility / equipment	Destroy
11.1(b)	• Capital projects (all other project records)	1 year following project completion	Destroy
11.1(c)	• Operating and maintenance records (equipment / facility)	Lifetime of equipment / facility	Destroy
11.1(d)	• Handivan transit records (including user applications, operating grant documentation, etc.)	2 years	Destroy
11.1(e)	• Program records (including planning, scheduling, staffing, training, statistics)	2 years	Destroy
11.1	Airports		
11.2(a)	• Department of Transport agreements or grants (working copy)	Term + 1 year	Destroy
11.2(b)	• Capital projects (acquisition or as-built records)	Lifetime of facility / equipment	Destroy
11.2(c)	• Capital projects (all other project records)	1 year following project completion	Destroy
11.2(d)	• Operating and maintenance records (equipment / facility)	Lifetime of facility / equipment	Destroy
SOCIAL SERVICES			
12.1	Client file (includes application, record of benefits, medical records, acceptance or rejection, personal financial records, appeal records, etc.)	3 years	Destroy
12.1	Program report - monthly (includes details of all financial transactions with recipients, and statistical or financial summaries)	2 years	Destroy

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Amendment:

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Item	Description of Record	Minimum Retention Period	Disposition
LAND USE AND DEVELOPMENT			
13.1	Support files re: Planning Scheme, Basic Planning Statement, Development Plan (including copies of plans, amendments, and applications, advertising, hearing and special records)	6 years after by-law repealed	Destroy
13.2	Zoning files (including applications, advertising, copy of by-laws, maps, hearing and appeal records)	6 years after by-law repealed	Destroy
13.3	Conditional use files (including applications, advertising, hearing records and permit)	1 year after conditional use ceases	Destroy
13.4	Variation orders (including applications, advertising hearing records and order)	1 year after variation requirement ceases	Destroy
13.5	Zoning memorandums and certificates of non-conformity	Lifetime of structure	Destroy
13.6	Sub-division files (including copy of application, copy of report from Province or Planning Board, any copy of notices, and a copy of hearing, copy of approval conditions or denial by municipal resolution, conditional approval or denial by Province or Planning Board, and all supporting documents, any subdivision construction plan or engineering reports, environmental assessment or impact study, dedication and legal fees documents, letter of credit, development agreement, performance bond, appeals to Municipal Board or Planning Board and all supporting documents)	6 years after registration of plan of subdivision	Destroy
ASSESSMENT AND TAXATION			
14.1	Assessment rolls		
14.1(a)	• Preliminary rolls	1 year	Destroy
14.1(b)	• Final roll (up to and including 1982)	Transfer immediately	Archive
14.1(c)	• Final roll (1983 and following)	10 years	Destroy
14.2	Tax collectors roll or tax collection activity report	10 years	Archive
14.3	Tax collection records		
14.3(a)	• Tax notices (statement and demand for taxes)	1 year	Destroy
14.3(b)	• Receipts	6 years	Destroy
14.4	Tax rolls maintenance		
14.4(a)	• monthly roll trial balance	2 years	Destroy
14.4(b)	• All other records (including changes of address, additions and cancellation to rolls)	2 years	Destroy
14.5	Boards of Revision Records (including advertising, applications to Board, notice of sitting to applicant, decisions, appeals by applicants, and copy of decision of Municipal Board or Court of Queen's Bench)	1 year after final decision	Destroy
14.6	Tax sale records		
14.6(a)	• Warrant for sale (tax sale ledger)	10 years	Archive
14.6(b)	• All other records (including list of lands for tax sale, advertisement of sale, return to District Registrar, tax sale certificate(s), assignment of tax sale certificates, certificate(s) of redemption, return of non-redemption to District Registrar, and application(s) for title)	1 year after redemption or registration of title	Destroy
POLICE, AMBULANCE, FIRE, EMERGENCY RESPONSE			
15.1	Administrative records	See item 3 of this Schedule ←	Same
15.2	Operational records	See appropriate federal or provincial regulations ←	Same

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	New: <input checked="" type="checkbox"/>	Amendment: <input type="checkbox"/>

9.2 Guidelines for Fire Protection Services

(1) Legal Requirements

Section 264 requires municipalities to provide fire protection services to reduce the danger of fire within the municipality.

The following guidelines outline the range of fire protection services available to municipalities. At a minimum, municipalities must provide:

- education programs
- inspections of property

Fire protection services may also include, but are not limited to:

- installation of alarms
- a fire protection force
- instructions on fighting fires
- fire fighting equipment.

In determining a municipality's liability for fire protection, Section 391 directs the court to consider several factors to determine whether the municipality's fire protection services meet the "standard of care" reasonable for that municipality. These factors, which should be considered by the municipality when developing or improving the municipality's fire protection program, are:

- population density
- geographic limitations
- whether the service is volunteer or partly volunteer
- assessment base
- other factors that may be set by regulation.

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(2) Guidelines for Fire Protection Services

The Office of the Fire Commissioner and the Manitoba Association of Fire Chiefs believe that it should be the goal of every municipality to deliver high quality, effective fire protection services.

Fire protection services range from fire prevention (for example, public education) to active fire suppression (for example a fire protection force).

The nature of the fire protection services delivered by a municipality depends on several factors, including the size, geography and nature of the municipality. As such, municipalities should consider the practicality of the various fire protection methods (outlined below).

As a minimum, municipalities must provide a public fire safety education and inspection program. This ensures a basic commitment to fire safety and is easily achieved by any municipality.

The Office of the Fire Commissioner can help municipalities develop their municipal fire protection program.

The Office of the Fire Commissioner and the Manitoba Association of Fire Chiefs have developed the following guidelines for the various types of fire protection services:

- ***Education programs.*** Seminars or courses approved by the Manitoba Emergency Services College are available for children and adults. Topics include fire prevention, fire safety and procedures to follow in fire and other related emergencies. **Every municipality must provide a public fire safety education program.**
- ***Inspections of property.*** Voluntary inspections of private buildings, and mandatory annual inspections of public buildings by a qualified inspector (approved by the OFC), can assist to detect fire hazards and fire safety violations. Any resulting recommendations must comply with Manitoba government codes and standards. **Every municipality must develop a fire safety inspection program.**

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- ***Installation of alarms.*** Municipalities should encourage the installation of alarm equipment appropriate to the classification of structures to warn occupants and/or fire departments of potential or actual fire emergencies. Equipment, installation and maintenance must comply with Manitoba government codes and standards.
- ***Provision of fire fighting equipment.*** Municipalities should encourage the installation of:
 - early warning systems
 - fixed fire extinguishing systems
 - sprinkler systems
 - standpipe and hose systems
 - fire extinguishers

All equipment, installation and maintenance must comply with Manitoba government codes and standards.

- ***Provision of a fire protection force.*** Municipalities providing the services of a fire protection force on their own, or by agreement or contract with another municipality, must ensure that the force consists of personnel (full time, part-time or volunteer), equipment and water supply to protect life and property from fire or other emergencies. The force should be able to:
 - extinguish most fires, with limitations being unusual circumstances such as lateness of the fire call or shortage of water or equipment due to breakdown.
 - provide emergency services to avoid a fire or explosion situation.
 - respond to dangerous goods incidents.
 - safeguard life in a variety of situations requiring prompt action.

The personnel, equipment and water supply needed for the force to provide required protection should be determined on an individual area basis. Some municipalities may be unable to extend services of a fire protection force to remote or no-road access areas. All equipment, installation and maintenance must comply with Manitoba government codes and standards.

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A recognized fire protection force should also meet the requirements of the latest edition of the *Fire Underwriter Survey - A Guide to Public Fire Protection*. Copies of this publication are available from the Assiniboine Community College bookstore, in Brandon.

Training for fire protection forces is available from the Office of the Fire Commissioner.

- ***Developing an incident management system and general operating guidelines for a fire protection force.*** A plan of what to do and in what order is the key to managing any emergency incident. The Office of the Fire Commissioner can provide assistance in preplanning (including the development of general operating guidelines), size-up, and overall strategy.

(3) Assistance from the Office of the Fire Commissioner

The Office of the Fire Commissioner can assist municipalities develop a program for fire protection services and the training of the municipality's fire protection force. Contact:

**OFFICE OF THE FIRE COMMISSIONER,
MANITOBA GROWTH, ENTERPRISE AND TRADE**

Winnipeg: 508-401 York Avenue
Winnipeg MB R3C 0P8
ph: (204) 945-3322 or 1-800-282-8069 / fax: (204) 948-2089

Brandon: 1601 Van Horne Avenue
Brandon MB R7A 7K2
ph: (204) 726-6855 or 1-888-253-1488 / fax: (204) 726-6847

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9.3 Municipal Roads

(1) Legal Requirements

Section 287 states that a municipality is responsible for the direction, control and management of municipal roads within its boundaries.

Section 288 provides that a municipality may:

- open (subject to section 289) or close (subject to section 290) a municipal road;
- lease or authorize the sale of land on which was situated a municipal road that has been or is to be closed (subject to section 291);
- remove and sell sand and gravel found on or under a municipal road (subject to section 292);
- construct, improve, alter or divert a municipal road;
- use private land as a temporary municipal road, subject to the payment of compensation for the use of the land and any damage caused by the use; and
- subject to *The Water Rights Act*, acquire, enter upon or use land in or adjacent to the municipality for drainage for a municipal road, or for an outlet for drainage, subject to the payment of compensation for the use of the land and any damage caused by the use.

The following sets out the recommended procedures for closing or opening a municipal road with added provisions for the lease or authorizing the sale of land on which was situated a municipal road that has been or is to be closed.

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(2) Recommended Procedure to Close a Municipal Road (including procedure for sale of lands on which a closed municipal road was located)

Subsection 290(1) provides that, subject to subsection (2), a municipality may close a municipal road by

- (a) passing a by-law closing the road;
- (b) obtaining written approval of the by-law from the Minister of Municipal Relations and
- (c) registering the approved by-law and a plan at the appropriate land titles office.

Subsection 290(2) states that a municipality proposing to close a municipal road must give public notice and hold a public hearing under section 420 in respect to the proposed closure, and must serve notice under section 421 of the proposal and the hearing on the member of the Executive Council charged with the administration of *The Highways and Transportation Act* (Minister of Infrastructure).

This practice ensures that the by-law is given appropriate consideration by council, and by the agencies or property owners that may be affected by the road closing.

Subsection 291(2) provides that a municipality may authorize the sale of land on which was situated a municipal road that has been or is to be closed under section 290 only with the written approval of the minister (Minister of Municipal Relations).

Step 1: Prepare the Road Closing By-law (and if applicable, provide for authorizing the sale of land on which was situated a municipal road that has been or is to be closed)

(Refer to attached Appendix 1 for a sample Road Closing By-law)

(Refer to attached Appendix 2 for a sample Road Closing By-law and Sale of Land)

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In considering a road closing by-law, and if applicable, authorizing the sale of land on which was situated a municipal road that has been or is to be closed, municipalities are advised to first:

- conduct an internal review to address the following:
 - is there a good reason to close the road?
 - is the entire road to be transferred or is it to be divided amongst several owners?
 - to whom [identify the name of the individual(s)] will the parcel(s) be transferred (to be included in the by-law)?
 - will the by-law result in landlocked parcels or deny public access?
 - will the by-law create a dead end road?
 - does the by-law comply with local land use policies?
 - is the legal description of the road correct?
 - is there a map/plan of the road being closed?
 - what is the name of the road?
 - what is the disposition of the mines and minerals?
- refer the proposed by-law to the Community Planning Services, Regional (Planning) Office to identify planning and subdivision requirements, if any;
- discuss the proposed by-law with the Land Titles Office to determine whether a survey plan is required for the road closing, as well as any other title / ownership issues such as mines and minerals, if the land is being consolidated with adjoining titles; and
- consult with solicitor, particularly if a title transfer is involved.

Step 2: First Reading

The proposed by-law is given first reading.

Step 3: Municipal Review

After giving first reading to the by-law, municipalities are advised to circulate the by-law for review by the Government agencies and utilities that may be impacted by the by-law. While the advance review may be time-consuming, it is also a very important step in the road closing process to ensure that the by-law is done correctly and has the desired effect.

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Municipal Relations, Community Planning Services, Regional (Planning) Offices will, on request from the municipality, circulate the proposed by-law to provincial agencies and coordinate responses from those agencies on behalf of the municipality.

The municipality should also set a date by which comments about the by-law must be received by the municipality. Government agencies and utilities that may have an interest in reviewing the proposed road closing by-law include:

- Manitoba Hydro - to protect the right-of-way interests for facilities.
- Manitoba Telecom Services - to protect the right-of-way interests for facilities.
- Other Utilities - pipelines, cable companies, as appropriate.
- Land Titles Office - to verify registration requirements.
- Department of Sustainable Development - to determine Crown interests in the land.
- Department of Municipal Relations, Community Planning Services, Regional (Planning) Office - to identify any unresolved land use issues.
- Department of Agriculture, Agricultural Crown Lands (Regional Office) - where Agricultural Crown Lands has an interest (e.g. a lease).
- Department of Growth, Enterprise and Trade - to consider Crown interests with respect to mines and minerals.
- Department of Sport, Culture and Heritage - to identify any significant heritage sites in the area.
- Department of Infrastructure - where the provincial highway system is involved.
- Planning District - to the Planning District Board, if any.

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Step 4: Municipal Notice

(1) As noted previously, subsection 290(2) requires the municipality to give public notice and hold a public meeting respecting the closure of a road. This notice must be given in accordance with sub-section 420(1) and (2), which requires that the notice:

- be published at least twice in a newspaper or other publication having general circulation in the municipality, during the period starting 40 days before the hearing and ending seven days before it, the publications being at least six days apart;
- be posted in the municipal office for at least 14 days in the period described above; and
- contain the following information:
 - (a) the date, time and place of the hearing;
 - (b) a general description of the matter to be considered;
 - (c) that the purpose of the hearing is to allow any interested person to make a representation, ask questions or register an objection; and
 - (d) that any information and documents concerning the matter and the procedures to be followed at the hearing are available for review at the municipal office or other place in the municipality.

To ensure all property owners with land abutting the road are also informed, municipalities may consider mailing notice of the proposed by-law and the public hearing to the property owners.

(2) Subsection 290(2) also requires the municipality to serve notice of the proposal and hearing on the member of the Executive Council charged with the administration of *The Highways and Transportation Act* (Minister of Infrastructure) = This notice must be given in accordance with section 421, which requires that the notice be served

- by delivering a copy of it personally; or
- by sending a copy of it to the person by registered or certified mail or by other type of mail, delivery or facsimile transmission or other type of communication facility, or which confirmation of notice having been sent may be obtained; and
- at the same time and contain the same information as the notice given under section 420 as described above.

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Step 5: Council Action / Second and Third Reading

After considering any concerns expressed at the public hearing and comments received through the review process (Step 3), council may

- (a) give the by-law second and third reading if there are no changes to be made;
- (b) amend the by-law and give second and third reading if, in the opinion of council, the amendments are minor and do not change the intent of the by-law; or
- (c) amend the by-law and repeat the review, notice and public hearing process if the amendment changes the intent of the by-law (i.e. return to Steps 3 and 4).

If during the course of adopting the by-law, council decides not to proceed, council should accordingly advise the Government agencies, utilities and all others that had previously been notified.

Step 6: Submission of By-law for Approval

Approval of the by-law (for road closure or road closure and sale of lands) by the Minister of Municipal Relations is required before the by-law has any effect. After the by-law has received third reading, council must then submit the by-law to the Community Planning Services, Regional (Planning) Office, which will forward the by-law to the Minister of Municipal Relations for approval.

The submission should consist of one copy of each of the following:

- a certified copy of the by-law;
- a paper print of a survey plan (if Land Titles Office indicates a plan is required);
- a summarized report of objections received from both the public hearing and provincial review and statements on how objections were dealt with; and

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- a declaration by the Chief Administrative Officer that notice and public hearing for the by-law had been properly executed in accordance with subsection 290(2) and sections 420 and 421. (See Appendix 5 for a sample Declaration)

NOTE (1) If the by-law purports to authorize the vesting of Mines and Minerals as provided in subsection 291(3) (see sample by-law Appendix 3) or the sale of lands shown as Road Allowance in the Dominion Government Survey as provided in subsection 291(4) (see sample by-law Appendix 4), council must first obtain written approval from the member of the Executive Council charged with the administration of *The Crown Lands Act* (the Minister of Sustainable Development) before submitting the by-law to the Minister of Municipal Relations as outlined above.

NOTE (2) Subsection 291(1) provides that a municipality may lease land on which was located a municipal road that has been closed, if the lease is in a form approved by the Minister of Municipal Relations and filed with the member of the Executive Council charged with the administration of *The Crown Lands Act* (Minister of Sustainable Development).

Step 7: Land Titles Registration

Following third reading of the by-law, and after written approval of the Minister of Municipal Relations is received, the municipality must submit the by-law and survey plan (if applicable) to the Land Titles Office for registration [subsection 290(1)].

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(3) Recommended Procedure to Open a Municipal Road

Section 289 provides that, a municipality may open land for public use as a municipal road by

- (a) passing a by-law opening the road; and
- (b) registering the by-law and a plan at the appropriate land titles office.

(Note: roads opened through the subdivision process are subject to the provisions of *The Planning Act*.)

Note that the following steps are similar to those for closing a road.

Step 1: Prepare the Road Opening By-Law

(Refer to attached Appendix 6 for a sample Road Opening By-law)

In considering a road opening by-law, municipalities are advised to first:

- conduct an internal review to address the following:
 - does the municipality own the land in question? If not, are the property owners prepared to sell the land? At what cost?
 - will the new road require buildings to be moved? Fences? Drains?
 - has the municipality discussed the matter with a Manitoba Land Surveyor who will be required to prepare a survey plan?
 - has the municipality obtained permission to access the property prior to preparing a survey plan?
 - has the municipality discussed the matter with the municipal solicitor who may be requested to register the by-law at the Land Titles Office?
- discuss planning and subdivision requirements with the Community Planning Services, Regional (Planning) Office.

Step 2: First Reading

The proposed by-law is given first reading.

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Step 3: Municipal Review

Municipalities should send the proposed road opening by-law and survey plan to the various Government agencies and utilities that may have an interest (listed on page 4) for review.

Municipal Relations, Community Planning Services, Regional (Planning) Offices will, on request from the municipality, circulate the proposed by-law to provincial agencies and coordinate responses from those agencies on behalf of the municipality.

Step 4: Council Action / Second and Third Reading

After considering any comments received through the municipal review process (Step 3), council may:

- (a) give the by-law second and third reading if there are no changes to be made;
- (b) amend the by-law and give second and third reading if, in the opinion of council, the amendments are minor and do not change the intent of the by-law; or
- (c) amend the by-law and repeat the review process if the amendment changes the intent of the by-law (i.e. return to Step 3).

If, during the course of adopting the by-law, council decides not to proceed, council should accordingly advise the Government agencies, utilities and all others that had previously been notified.

Step 5: Land Titles Registration

After third reading of the by-law, council must submit the by-law and survey plan to the Land Titles Office for registration [clause 289(b)].

Step 6: Forward Copy of By-Law to Municipal Relations

To ensure provincial records are updated, the municipality is requested to forward a copy of the approved by-law to the Community Planning Services, Regional (Planning) Office.

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Appendix 1 — Sample Road Closing By-law

(Name of Municipality)

By-law No.

Being a by-law to close a municipal road

WHEREAS subsection 290(1) of *The Municipal Act* provides, in part, as follows:

"Subject to subsection (2), a municipality may close a municipal road by

(a) passing a by-law closing the road;

(b) obtaining written approval of the by-law from the minister; and

(c) registering the approved by-law and a plan at the appropriate land titles office."

AND WHEREAS the following described municipal road is no longer required for public purposes and it is necessary and desirable and in the public interest that the road be closed;

NOW THEREFORE the council of The (name of municipality) enacts as follows:

"A" - Use where plan has to be prepared for closing.

- [1. THAT all that portion of the municipal road shown on a plan prepared by John Doe, Manitoba Land Surveyor, on the (day) of (month) (year), and sworn to by him on the (day) of (month) (year), be and the same is hereby closed.

OR

"B" - Use where plan is already registered at LTO or where description must be created.

- [1. THAT all that portion of the municipal road described as (insert a legal description acceptable to the LTO) be and the same is hereby closed.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).

Read a second time this (day) of (month) (year).

Read a third time this (day) of (month) (year).

FOLLOWING THIRD READING... Pursuant to clause 290(1) (b) of *The Municipal Act*, written approval of the by-law from the Minister of Municipal Relations is attached hereto as Schedule A.

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Page: 9.3.11

Date Issued: January 2017

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Amendment: √

Appendix 2 — Sample Road Closing and Sale of Land By-law

(Name of Municipality)

By-law No.

Being a by-law to close a municipal road and authorize the sale of land

WHEREAS *The Municipal Act* provides, in part, as follows:

290(1) "Subject to subsection (2), a municipality may close a municipal road by

(a) passing a by-law closing the road;

(b) obtaining written approval of the by-law from the minister; and

(c) registering the approved by-law and a plan at the appropriate land titles office."

291(2) "A municipality may authorize the sale of land on which was situated a municipal road that has been or is to be closed under section 290 only with the written approval of the minister."

AND WHEREAS the following described municipal road is no longer required for public purposes and it is necessary and desirable and in the public interest that the road be closed;

NOW THEREFORE the council of The (name of municipality) enacts as follows:

"A" - Use where plan has to be prepared for closing.

1. THAT all that portion of the municipal road shown on a plan prepared by John Doe, Manitoba Land Surveyor, on the (day) of (month) (year), and sworn to by him on the (day) of (month) (year), be and the same is hereby closed.

OR

"B" - Use where plan is already registered at LTO or where description must be created.

1. THAT all that portion of the municipal road described as (insert a legal description acceptable to the LTO) be and the same is hereby closed.

2. THAT all that portion of the municipal road so closed shall be transferred to _____ excepting all mines and minerals, title to which shall remain in the Crown; and the chief administrative officer is authorized and directed to do all acts and execute all documents required for the transfer.

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).

Read a second time this (day) of (month) (year).

Read a third time this (day) of (month) (year).

FOLLOWING THIRD READING... Pursuant to clause 290(1) (b) and subsection 291(2) of *The Municipal Act*, written approval of the road closing by-law and sale of land, from the Minister of Municipal Relations, is attached hereto as Schedule A.

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Appendix 3 — Sample Road Closing and Sale of Land By-law (including the transfer of mines and minerals)

(Name of Municipality)

By-law No.

Being a by-law to close a municipal road and authorize the sale of land including the transfer of mines and minerals

WHEREAS The Municipal Act provides, in part, as follows:

290(1) “Subject to subsection (2), a municipality may close a municipal road by

- (a) passing a by-law closing the road;
- (b) obtaining written approval of the by-law from the minister; and
- (c) registering the approved by-law and a plan at the appropriate land titles office.”

291(2) “A municipality may authorize the sale of land on which was situated a municipal road that has been or is to be closed under section 290 only with the written approval of the minister.”

291(3) “Where a municipality authorizes the sale of land on which was situated a municipal road that has been closed under section 290, a transfer of land to a person vests in the person the fee simple, but the title to the mines and minerals remains vested in the Government of Manitoba unless their sale is approved in writing by the member of the Executive Council charged with the administration of The Crown Lands Act.”

AND WHEREAS the following described municipal road is no longer required for public purposes and it is necessary and desirable and in the public interest that the road be closed;

NOW THEREFORE the council of The (name of municipality) enacts as follows:

“A” - Use where plan has to be prepared for closing.

1. THAT all that portion of the municipal road shown on a plan prepared by John Doe, Manitoba Land Surveyor, on the (day) of (month) (year), and sworn to by him on the (day) of (month) (year), be and the same is hereby closed.

OR

“B” - Use where plan is already registered at LTO or where description must be created.

1. THAT all that portion of the municipal road described as (insert a legal description acceptable to the LTO) be and the same is hereby closed.

2. THAT all that portion of the municipal road so closed shall be transferred to _____ including all mines and minerals, and the chief administrative officer is authorized and directed to do all acts and execute all documents required for the transfer.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

FOLLOWING THIRD READING... Pursuant to clause 290(1) (b) and subsection 291(2) of *The Municipal Act*, written approval of the road closing by-law and sale of land, from the Minister of Municipal Relations, is attached hereto as Schedule A; **and pursuant** to subsection 291(3) of *The Municipal Act*, written approval of the transfer of mines and minerals, from the Minister of Sustainable Development, is attached hereto as Schedule B.

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Date Issued: January 2017

New:

Amendment: √

Appendix 4 — Sample Road Closing and Sale of Land By-law (where the land is shown as a road allowance in the Dominion Government Survey)

(Name of Municipality)

By-law No. _____

Being a by-law to close a municipal road and authorize the sale of land shown as a road allowance in the Dominion Government Survey

WHEREAS The Municipal Act provides, in part, as follows:

290(1) "Subject to subsection (2), a municipality may close a municipal road by

- (a) passing a by-law closing the road;
- (b) obtaining written approval of the by-law from the minister; and
- (c) registering the approved by-law and a plan at the appropriate land titles office."

291(2) "A municipality may authorize the sale of land on which was situated a municipal road that has been or is to be closed under section 290 only with the written approval of the minister."

291(4) "A municipality may authorize that sale of land shown as a road allowance in the Dominion Government Survey only with the written approval of the member of the Executive Council charged with the administration of The Crown Lands Act."

AND WHEREAS the following described municipal road is no longer required for public purposes and it is necessary and desirable and in the public interest that the road be closed:

NOW THEREFORE the council of The (name of municipality) enacts as follows:

"A" – Use where plan has to be prepared for closing.

1. THAT all that portion of the municipal road being a road allowance in the Dominion Government Survey, shown on a plan prepared by John Doe, Manitoba Land Surveyor, on the (day) of (month) (year), and sworn to by him on the (day) of (month) (year), be and the same is hereby closed.

OR

"B" – Use where a plan is already registered at LTO or where description must be created.

1. THAT all that portion of the municipal road being a road allowance in the Dominion Government Survey, described as (insert a legal description acceptable to the LTO) be and the same is hereby closed.

2. THAT all that portion of the municipal road so closed shall be transferred to _____ excepting all mines and minerals, title to which shall remain in the Crown; and the chief administrative officer is authorized and directed to do all acts and execute all documents required for the transfer.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

FOLLOWING THIRD READING, pursuant to clause 290(1)(b) and subsection 291(2) of *The Municipal Act*, written approval of the road closing by-law and sale of land, from the Minister of Municipal Relations, is attached hereto as Schedule A **and pursuant** to subsection 291(4) of *The Municipal Act*, written approval of the sale of land shown as a road allowance in the Dominion Government Survey, from the Minister of Sustainable Development, is attached hereto as Schedule B.

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Date Issued: January 2017

New:

Amendment: ✓

Appendix 5 — Sample Declaration by the Chief Administrative Officer Regarding Notice of Road Closing

STATUTORY DECLARATION

In the matter of Road Closing By-law No. _____

I, (insert name of chief administrative officer), of The (name of municipality), in the Province of Manitoba,
MAKE OATH AND SAY:

1. THAT I am the Chief Administrative Officer of The (name of municipality);
2. THAT I caused to be published in the _____, a newspaper having general circulation in the area, in its issues of _____, and _____, a notice of public hearing regarding Council's intention to close a certain portion of municipal road;
3. THAT I caused to be posted, a copy of said notice, in the municipal office for the period from _____ to _____, (year);
4. THAT I did serve notice of the proposal and hearing on the Minister of Infrastructure;
5. THAT Council sat at _____ on _____, (year) at the time set out in the notice;

Sworn (or affirmed) before me)
at the _____ of _____)
in the Province of Manitoba)
this (day) of (month) (year).)

B. Jones
Chief Administrative Officer

A Commissioner for Oaths
(or as the case may be)

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Date Issued: January 2017

New:

Amendment: ✓

Appendix 6 — Sample Road Opening By-law

(Name of Municipality)

By-law. _____

Being a by-law to open a municipal road

WHEREAS section 289 of The Municipal Act provides as follows:

“A municipality may open land for public use as a municipal road by

- (a) passing a by-law opening the road; and
- (b) registering the by-law and a plan at the appropriate land titles office.”

AND WHEREAS it is deemed necessary and desirable to open a municipal road over, upon and across the lands hereinafter described;

NOW THEREFORE the council of The (name of municipality) enacts as follows:

1. THAT a municipal road be and is hereby opened and established over, upon, and across the lands described as follows:

All that portion of the municipal road shown on a plan prepared by John Doe, Manitoba Land Surveyor, on the (day) of (month) (year), and sworn to by him on the (day) of (month) (year)

and the said lands are hereby dedicated to the public for that purpose.

2. THAT the said plan of survey is hereby adopted and approved, and the chief administrative officer is authorized and directed to endorse the aforementioned plan of survey for identification, placing thereon his signature, under the corporate seal of the municipality, together with a reference to this by-law.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.1

Date Issued: October 2007

New:

Amendment: √

10.1 Local Improvements and Special Services

(1) Background

Local improvement and special service by-laws allow municipalities to tax only the taxpayers who will benefit from the local improvement or special service provided. Given the uniqueness of this financing method, *The Municipal Act* imposes obligations on councils to communicate with the public, hold public hearings and make information accessible. This allows the taxpayers the opportunity to review, consider and support or object to the plan or proposal before it is adopted.

Section 311 states that a local improvement may be any project the cost of which includes a capital component including sewage, water or waste management facilities, highways or drainage systems, which may be provided to all or part of the municipality.

Usually a local improvement project involves borrowing money to finance the project. The cost of the local improvement is limited to the capital costs for the project, plus any finance charges. The amount of revenue raised by the local improvement tax to repay the cost of the local improvement must be the same in each year, although potential taxpayers have the option of prepaying the local improvement taxes if these taxes are not based in whole or in part on assessment (mill rate), i.e. on a frontage basis. The local improvement tax ends when the cost of the project and finance charge is repaid. The term of the borrowing must not exceed the estimated useful life of the capital property.

Section 312 lists special services that may be provided to all or part of the municipality. A special service does not provide for a capital component. The special service tax reflects the actual cost of providing the service and is levied each year as set out in the by-law.

Subsection 316(1) sets out the basis on which a local improvement or special service tax may be calculated, for example, on assessment, area of the land, frontage, etc. It should also be noted that under subsection 316(4), local improvement and special service taxes may be imposed on otherwise exempt property, i.e., schools, churches and hospitals (excluding property described under section 21 of *The Municipal Assessment Act*).

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PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.2

Date Issued: October 2007

New:

Amendment: √

(2) Implementing a Local Improvement or Special Service

Where council decides (by resolution) to proceed with a local improvement or special service, implementation is identical for both. Appendix 1 sets out the general process for implementing a local improvement or special service. The Municipal Finance Officer is available to assist municipalities in preparing their documents.

Step 1 - The Local Improvement Plan or Special Service Proposal

- A local improvement plan must be prepared in accordance with section 315.
- A special service proposal must be prepared in accordance with section 314.

Local improvement plans and special service proposals must include detailed information on the project or proposal including a complete description of the local improvement project or special service, the cost, the properties and taxpayers affected and the method and rate for calculating the tax.

Step 2 - Notice of the Local Improvement Plan or Special Service Proposal

(a) Method of Notice

Where only part (not all taxpayers) of the municipality is included in plan or proposal

Subsection 318 provides that a municipality must:

- send notice, by mail, at least 21 days before the date of the public hearing, of the local improvement plan or special services proposal to each potential taxpayer under the plan or proposal including potential taxpayers of ‘otherwise exempt’ properties; and
- send notice, by registered (certified) mail to railway company (if potential taxpayer).

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PART: 10 – POWERS OF TAXATION	
Subject: 1 – Local Improvements and Special Services	
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New:	Amendment: √

It is important to remember that potential taxpayers may include other public entities in the municipality such as schools, hospitals, and churches that normally do not receive a property tax bill. These properties are ‘otherwise exempt’ and do not pay taxes levied by a municipality, other than local improvement and special service taxes. To ensure these property owners have an opportunity to consider the plan or proposal, the appropriate governing body (e.g. School Division Board of Trustees, Regional Health Authority Board, Church Board) and the administrator (e.g. School Division Superintendent, RHA CEO, Church Board Chairperson) should be provided with notice.

Where the whole (all taxpayers) of the municipality is included in plan or proposal

Subsection 318(4) provides that if the whole of the municipality is to be included in the local improvement plan or special service proposal, notification may be given in accordance with section 420(1), as follows:

- published in a publication with general circulation in the municipality, during the period starting 40 days before the public hearing, and ending 7 days before the hearing. The notice must be published at least twice and at least 6 days apart; and
- posted in the municipal office for at least 14 days, during the period starting 40 days before the public hearing and ending 7 days before the hearing.

It is important to remember some potential taxpayers such as those classified as ‘otherwise exempt’, corporations or businesses with head offices located in other municipalities or provinces, or other non-resident property owners may not have the benefit of reading the public notice in the newspaper. To ensure these property owners have an opportunity to consider the plan or proposal, steps should be taken to ensure the potential taxpayer is provided notice.

(b) Content of Notice

In all cases, whether mailed to each potential taxpayer or a published public notice, the notice must summarize the information contained in the plan or proposal, and provide information about the right to object. The notice must include enough information for the public to clearly understand the implications and costs of the plan or proposal.

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PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.4

Date Issued: October 2007

New:

Amendment: √

Notice for a local improvement plan must:

- Describe the proposed local improvement.
- Identify the local improvement district or the lands or businesses in respect of which the local improvement tax is to be imposed.
- Identify the potential taxpayers under the plan.
- State the method and rate to be used for calculating the proposed local improvement tax, the number of years in which it is to be imposed and, if the tax can be prepaid, the estimated discount or rate of discount for prepayment.
- Identify the anticipated sources of funding to pay for the local improvement and the portion of the estimated cost to be paid by each source.
- State the estimated amount of money to be borrowed, and the maximum rate of interest, the term and the terms of repayment of the borrowing.
- State how the annual operation and maintenance of the local improvement is to be funded.
- Provide information about the right to object to the local improvement plan.

Notice for a special service proposal must:

- Describe the proposed service.
- Describe the area of the municipality to which the service is to be provided and in respect of which the special services tax is to be imposed.
- State the estimated cost of the service.
- State the proposed method and rate to be used for calculating the special service tax.
- Provide information about the right to object to the special service proposal.

In addition to the notice, the municipality must ensure that a copy of the local improvement plan or special service proposal, in its entirety, is available for the public to examine at the municipal office during regular business hours. Many municipalities also post local improvement plans and special service proposals on their website.

Sample notices regarding a local improvement plan and a special service proposal are attached, as Appendix 2 and Appendix 3.

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PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

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Date Issued: October 2007

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Amendment: √

Step 3 - The Public Hearing

The public hearing will be conducted in accordance with the procedure established in your municipality's procedural by-law (Refer to Part 5.4, "Procedures By-law"). It is important to maintain for your records the name of each person in attendance at the public hearing and the name and mailing address of each person who files an objection (written or verbal).

To encourage public attendance at the hearing, municipalities may hold the public hearing:

- in the evening, rather than during the day;
- as part of, or immediately following a regular council meeting; and
- at a location that will accommodate a greater than regular attendance, for example a community hall rather than a small council chamber.

Step 4 - Action By Council After Public Hearing

Where 2/3 or more of potential taxpayers object to the plan or proposal

Council may not proceed with the plan or proposal, and cannot propose a similar project for two years.

Where there are no objectors, or less than 2/3 of potential taxpayers object to the plan or proposal

Council may proceed as follows:

1. Give first reading to the by-law that approves the plan or proposal and authorizes the imposition of taxes.
2. Provide notice, by mail, to each person who filed an objection to the plan or proposal, of council's intent to proceed with third reading of the by-law and of the person's right to file a notice of objection with The Municipal Board. (Sample notices are attached, as Appendix 4 and 5.)

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PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.6

Date Issued: January 2017

New:

Amendment: √

3. Submit the original and three certified copies of the local improvement or special service by-law, the Application for By-law Approval, and a Statutory Declaration to:

Municipal Finance Officer
Municipal Finance and Advisory Services
508 – 800 Portage Avenue
Winnipeg, Manitoba R3G 0N4
ph: (204) 945-2575
fax: (204) 948-2780

Note: Samples of the Application for By-law Approval and the Statutory Declaration are available from the Municipal Finance Officer.

4. The Municipal Finance Officer will review the documents before they are submitted to The Municipal Board, to ensure that all relevant documentation has been prepared, that proper notice has been given, and all the necessary information included in the notice.
5. Following the review, the Municipal Finance Officer will submit the municipality's by-law to The Municipal Board on behalf of the municipality. The Municipal Finance Officer will also advise the Municipal Board if there are any issues or concerns in regard to the plan or proposal.

(3) Action by The Municipal Board

The Board must consider every by-law and, by written order, approve the by-law, refuse to approve the by-law or require that the by-law be amended. Under subsection 321(4), council may give third reading to a by-law only as amended or approved by the Board.

If at least 25, or 10% of the potential taxpayers object to The Municipal Board, the Board **must** hold a hearing regarding the by-law to adopt the local improvement plan or special service proposal.

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.7

Date Issued: October 2007

New:

Amendment: √

Appendix 2 — Sample Public Hearing Notice for a Local Improvement Plan

(Name of Municipality)

PUBLIC NOTICE

REGARDING LOCAL IMPROVEMENT PLAN - BY-LAW NO. ____

FOR THE (INSERT A BRIEF PLAN DESCRIPTION HERE)

The council of the (name of municipality) has scheduled a public hearing at (location of meeting) on the (day) (month) (year) at (time, a.m. or p.m.) to present the following local improvement plan:

*A summary of local improvement plan must be included here.
(Refer to page 10.1.4 for the information that must be included).*

A written objection may be filed with the Chief Administrative Officer, at (address of municipal office) prior to the commencement of the hearing. At the hearing, Council will hear any potential taxpayer who wishes to make a presentation, ask questions or register an objection to the local improvement plan.

All objections, written or verbal, must be filed prior to the adjournment of the hearing and must include the name, address and property description of the person filing the objection and the grounds of their objection.

Copies of the local improvement plan are available at the municipal office at (location of municipal office) and on the municipal website at: (web address).

Dated at the (name of municipality) this ____ day of ____ A.D. 20__, and issued pursuant to Section 318 of *The Municipal Act*.

B. Jones
Chief Administrative Officer
(Name of Municipality)
(Phone Number)

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.8

Date Issued: January 2017

New:

Amendment: ✓

Appendix 3 — Sample Public Hearing Notice for a Special Service Proposal

(Name of Municipality)

PUBLIC NOTICE

REGARDING SPECIAL SERVICE PROPOSAL - BY-LAW NO. ____

FOR THE (INSERT A BRIEF PROPOSAL DESCRIPTION HERE)

The council of the (name of municipality) has scheduled a public hearing at (location of meeting) on the (day) (month) (year) at (time, a.m. or p.m.) to present the following special service proposal:

*A summary of the special service proposal must be included here.
(Refer to page 10.1.4 for the information that must be included).*

A written objection may be filed with the Chief Administrative Officer, at (address of municipal office) prior to the commencement of the hearing. At the hearing, Council will hear any potential taxpayer who wishes to make a presentation, ask questions or register an objection to the special service proposal.

All objections, written or verbal, must be filed prior to the adjournment of the hearing and must include the name, address and property description of the person filing the objection and the grounds of their objection.

Copies of the special service proposal are available at the municipal office at (location of municipal office) and on the municipal website at: (web address).

Dated at the (name of municipality) this ____ day of ____ A.D. 20__, and issued pursuant to Section 318 of *The Municipal Act*.

B. Jones
Chief Administrative Officer
(Name of Municipality)
(Phone Number)

**Municipal Act
Procedures Manual**

PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.9

Date Issued: January 2017

New:

Amendment: ✓

**Appendix 4 — Sample Notice for Objections to The Municipal
Board Prior To Third Reading of a By-law Authorizing
A Local Improvement Plan**

(Name of Municipality)

PUBLIC NOTICE

OBJECTIONS TO THE MUNICIPAL BOARD

IN RESPECT OF LOCAL IMPROVEMENT PLAN BY-LAW NO. _____

(INSERT BRIEF DESCRIPTION OF THE PLAN)

The council of the (name of municipality) intends to give third reading to by-law no. _____ to approve the following local improvement plan.

*A summary of the local improvement plan must be included here.
(Refer to page 10.1.4 for the information that must be included).*

Potential taxpayers under this local improvement plan by-law may object to the by-law by filing a notice of objection with the Secretary to The Municipal Board, 1144 – 363 Broadway, Winnipeg, Manitoba, R3C 3N9, within 30 days of the date of this notice.

A notice of objection must contain the name and address of the person filing the objection, identify the by-law number, identify the property in respect of which the objection is filed and state the grounds to the objection.

Dated at the (name of municipality) this ___ day of ___ A.D. 20___, and issued pursuant to Section 320(4) of *The Municipal Act*.

B. Jones
Chief Administrative Officer
(Name of Municipality)
(Phone Number)

**Municipal Act
Procedures Manual**

PART: 10 – POWERS OF TAXATION

Subject: 1 – Local Improvements and Special Services

Page: 10.1.10

Date Issued: January 2017

New:

Amendment: √

**Appendix 5 — Sample Notice for Objections to The Municipal
Board Prior To Third Reading of a By-law Authorizing
A Special Service Proposal**

(Name of Municipality)

PUBLIC NOTICE

OBJECTIONS TO THE MUNICIPAL BOARD

IN RESPECT OF SPECIAL SERVICE PROPOSAL BY-LAW NO. _____

(INSERT A BRIEF DESCRIPTION OF THE PROPOSAL HERE)

The council of the (name of municipality) intends to give third reading to by-law no. _____ to approve the following special service proposal.

*A summary of the special service proposal must be included here.
(Refer to page 10.1.4 for the information that must be included).*

Potential taxpayers under this special service proposal by-law may object to the by-law by filing a notice of objection with the Secretary to The Municipal Board, 1144- - 363 Broadway, Winnipeg, Manitoba, R3C 3N9, within 30 days of the date of this notice.

A notice of objection must contain the name and address of the person filing the objection, identify the by-law number, identify the property in respect of which the objection is filed and state the grounds to the objection.

Dated at the (name of municipality) this ___ day of ___ A.D. 20___, and issued pursuant to Section 320(4) of *The Municipal Act*

B. Jones
Chief Administrative Officer
(Name of Municipality)
(Phone Number)

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 2 – Supplementary Taxes

Page: 10.2.1

Date Issued: April 2005

New:

Amendment:

10.2 Supplementary Taxes

(1) Legal Requirements

Section 326(1) of *The Municipal Act* permits a municipality to correct its tax roll and impose supplementary taxes if, after the tax roll has been completed, the assessor reports to the municipality that:

- the property is liable to taxation but was not assessed;
- the property is liable to taxation due to change in ownership or use;
- the assessment of an improvement results in an increase to the assessment of the property;
- a change has been made in the classification of the property;
- the land has been improved or subdivided.

Section 326(1.1) of *The Municipal Act* provides a municipality with the authority to correct its business tax roll and impose supplementary taxes upon receipt of a report from the assessor.

(2) Issuing Supplementary Tax Notices

The Assessment Branch will provide the municipality with a Supplementary Tax Listing if after the tax roll is complete there are assessment revisions that will result in an increase to the tax roll. The Supplementary Tax Listing will provide the revised assessment information and the date the revision should take effect. Council may choose to impose supplementary taxes to reflect these assessment changes.

All supplementary taxes must be authorized by a resolution of Council and may be imposed for the current year and one year prior when applicable. If supplementary taxes are imposed, the municipality must send a supplementary tax notice that has been calculated using the applicable tax rate or rates set for that year. Council may collect, but are not required to submit, education taxes to the Public Schools Finance Board or to the local School Division(s) for supplementary taxes. A penalty may be imposed on supplementary taxes if they remain unpaid after the expiration of 90 days from the date the supplementary tax notice was issued.

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 2 – Supplementary Taxes

Page: 10.2.2

Date Issued: April 2005

New:

Amendment:

(3) Notice of the Right to Appeal Supplementary Taxes

A supplementary tax notice must include, in addition to the information contained in a regular tax notice, a notification of the taxpayer's right to appeal the assessment increase to the Board of Revision. The notice must advise the taxpayer that an appeal shall:

- be made in writing;
- be filed with the Chief Administrative Officer within 30 days after the date of mailing of the notice,
- set out the roll number and description of the property or business, and
- state the grounds of the appeal on which the appeal is based.

Appeals for supplementary taxes may be considered by the annual Board of Revision if they are filed with the Chief Administrative Officer 15 days prior to the Board of Revision hearing.

For this reason, if supplementary tax notices are mailed at least 45 days prior to the annual Board of Revision hearing date, there will be no need to schedule another Board of Revision to consider appeals for supplementary taxes.

(4) Grounds of Appeal of Supplementary Taxes

The grounds of the appeal may be based on one or a combination of the following:

- the liability to taxation of property or business;
- the assessment of property or business; or
- the classification of the property.

(5) Questions Pertaining To Supplementary Taxes

Taxpayers usually direct their assessment questions to the municipal administrative staff and it is recommended that, whenever possible, these inquiries be answered directly, rather than forwarding them to the Assessment Branch. Contact your local Assessment Office for assistance with questions that you are unable to address. Be sure to advise the assessors of any changes or corrections that may affect the assessment roll.

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 3 – Tax Cancellations

Page: 10.3.1

Date Issued: April 2005

New:

Amendment

10.3 Tax Cancellations

(1) Legal Requirements

Section 300(6) of *The Municipal Act* states that a municipality may correct its tax roll and cancel or reduce taxes in respect of a property if, after the tax roll has been completed, the assessor reports to the municipality that:

- the property is entitled to exemption from taxation due to change in ownership or use;
- the assessment of the property requires reduction because of a change in the physical condition of the property;
- a change has been made in the classification of the property.

Section 300(6.1) of *The Municipal Act* authorizes a municipality to cancel or reduce taxes in respect of business if, after the roll has been completed, the assessor reports to the municipality that:

- the business is entitled to exemption from taxation due to an ownership change;
- the business has ceased to operate and is no longer subject to a business assessment.

Municipalities may not consider tax cancellations for any other reason.

(2) Issuing Tax Cancellations

The Assessment Branch will provide the municipality with Assessment Reduction Listings that advise of any assessment reductions that should be noted throughout the year. Buildings that have been moved or demolished, classification changes, and errors in assessment can all result in assessment reductions. Information in this regard is provided to the Assessment Branch by the property owner, the municipality, or gathered by the assessors when conducting physical inspections of the municipality. The Assessment Branch also provides municipalities with reports that outline assessment changes resulting from Board of Revision decisions.

Municipal Act Procedures Manual

PART: 10 – POWERS OF TAXATION

Subject: 3 – Tax Cancellations

Page: 10.3.2

Date Issued: April 2005

New:

Amendment

Council should review Assessment Reduction Listings and cancel taxes accordingly. All tax cancellations must be authorized by a resolution of Council and property owners must be provided with an amended tax notice showing the taxes payable after the correction.

(3) Policy for Tax Cancellations

To ensure consistency, a municipality should implement a policy that clearly establishes their position on tax cancellations. For example, many municipalities choose to cancel only the taxes applicable to the current year and do not consider tax cancellations for prior years.

The policy could also provide for communication with the Assessment Branch on issues regarding:

- council's position on the cancellation of current taxes to reflect an assessment reduction that has been authorized by the Board of Revision for next year's assessment roll.
- limitations if any, on tax cancellation for non-compliance (eg. building demolished without permit), or other reasons.

(4) Questions Pertaining To Tax Cancellations

Taxpayers usually direct their assessment questions to the municipal administrative staff and it is recommended that, whenever possible, these inquiries be answered directly, rather than forwarding them to the Assessment Branch. Contact your local Assessment Office for assistance with questions that you are unable to address. Be sure to advise the assessors of any changes or corrections that may affect the assessment roll.

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION	
Subject:1 – Tax Certificates	
Page: 11.1.1	Date Issued: March 1997
New: <input checked="" type="checkbox"/>	Amendment:

11.1 Tax Certificates

(1) Legal Requirements

Section 339 defines taxes as:

- taxes or fees imposed under Part 10 of the Act.
- all other amounts, including penalties, that may be added to taxes or may be collected in the same manner as taxes may be collected (for example, bills for utilities, custom work).

Tax arrears are defined as taxes that remain unpaid after the day on which they are due.

Subsection 341(1) provides that on request and payment of a fee set by by-law, a designated officer must issue a tax certificate, with the following information:

- the total amount of taxes imposed in the current year and all amounts added to the taxes, as well as any payment made on current taxes.
- any tax arrears (which includes penalties) as of the date of the certificate.
- whether the land has been assessed for farming purposes under Section 17 of *The Municipal Assessment Act*.

Subsection 341(2) specifies that the tax certificate is binding on a municipality (although supplementary taxes may still be imposed for the period before the date of the tax certificate but not yet added to the roll). Therefore, proper care should be taken to ensure that the information shown on the tax certificate is correct.

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION	
Subject:1 – Tax Certificates	
Page: 11.1.2	Date Issued: March 1997
New: √	Amendment:

(2) CAO Responsibility for Issuing Tax Certificate

Normally the tax certificate would be prepared and signed by the chief administrative officer. However, council may, by by-law, delegate this responsibility to a designated officer.

(3) Samples

A sample tax certificate by-law to prescribe a fee for tax certificates is attached, as Appendix 1.

A sample tax certificate is attached, as Appendix 2.

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject:1 – Tax Certificates

Page: 11.1.3

Date Issued: March 1997

New:

Amendment:

Appendix 1 — Sample Tax Certificate By-Law

(Name of Municipality)

By-law Number _____

Being a by-law to prescribe a fee chargeable for tax certificates

WHEREAS subsections 341(1) of *The Municipal Act* provides as follows:

“On request and payment of a fee prescribed by by-law, a designated officer must issue a tax certificate ...”

AND WHEREAS it is deemed necessary and advisable to prescribe a fee chargeable for issuing tax certificates,

NOW THEREFORE the council of The (name of municipality) enacts as follows:

THAT the fee chargeable for a tax certificate shall be \$_____ with respect to the land described in each entry in the assessment roll for which a tax certificate is furnished.

DONE AND PASSED as a by-law of The (name of municipality) at (office location) in the Province of Manitoba this (day) of (month) (year).

R. Smith
Head of Council

(Municipal Seal)

B. Jones
Chief Administrative Officer

Read a first time this (day) of (month) (year).
Read a second time this (day) of (month) (year).
Read a third time this (day) of (month) (year).

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject:1 – Tax Certificates

Page: 11.1.4

Date Issued: February 2003

New:

Amendment:

Appendix 2 — Sample Tax Certificate

(Name of Municipality)

I, (name), (position) of The (Name of Municipality), in the Province of Manitoba, hereby certify that there are no taxes charged in the tax roll of the municipality against the land described below, except in the amount of \$ _____ as set out below.

The property to which this certificate relates is: (legal description).

Taxes levied against this property for (current year) were \$ _____.

The owner of the land is not indebted to the municipality for any other debt that may be charged and levied against the land and collected in the same manner in which ordinary taxes on the land are collectable, except the following (**indicate type and amount of each debt**).

<u>Type</u>	<u>Amount (\$)</u>
_____	_____
_____	_____

This property (indicate “is” or “is not”) subject to the Farm Use Tax Pay-Back provision of subsection 17(5) of *The Municipal Assessment Act*.

This certificate is binding on the municipality only to the date below and does not include taxes on any building that is under construction but not yet assessed and that may be added to the tax roll of the municipality under subsection 326(1) of *The Municipal Act*.

Dated at (place) this (day) of (month) (year).

Taxes (current year) \$ _____

Designated Officer
(Name of Municipality)

Tax Arrears _____

TOTAL _____

(Municipal Seal)

Municipal Act Procedures Manual

PART: 11 - TAX AND DEBT COLLECTION	
Subject: 2 - Tax Penalties, Tax Discounts and Interest on Tax Payments	
Page: 11.2.1	Date Issued: March 1997
New: <input checked="" type="checkbox"/>	Amendment: <input type="checkbox"/>

11.2 Tax Penalties, Tax Discounts and Interest on Tax Payments

(1) Tax Penalties

Section 346 permits a municipality by by-law to set a penalty rate for tax arrears subject to a regulated maximum of 1.25% per month. Council may, however, set a rate that is lower than the prescribed maximum. In setting a rate, council may wish to consider the current lending rates of financial institutions.

Penalties are added to and form part of the tax arrears at the end of each year.

Example 1: Amount required to pay tax arrears of \$3,150.00 subject to penalty of 6.25% [5 months x 1.25%].

Penalty calculation: \$3,150.00 x 6.25% = \$196.88
Payment required: \$3,150.00 + 196.88 = \$3,346.88

Example 2: Calculation of penalties on a partial payment of tax arrears subject to penalty of 6.25% [5 months x 1.25%]. Partial payment received: \$2,000.00.

It is incorrect to multiply the amount of the payment by the penalty rate to determine penalties. The proper calculation involves determining the principal amount of the tax payment by dividing the total payment by (1.0 + tax penalty rate). The balance of the payment represent penalties:

Principal amount of the payment: \$2,000.00 ÷ 1.0625 = \$1,882.35
Penalties: \$2,000.00 - 1,882.35 = \$117.65

The tax arrears receipt would indicate:

Payment on arrears	\$1,882.35
Penalty (1882.35 x 6.25%)	117.65
Total receipt	\$2,000.00

Municipal Act Procedures Manual

PART: 11 - TAX AND DEBT COLLECTION

Subject: 2 - Tax Penalties, Tax Discounts and Interest on Tax Payments

Page: 11.2.2

Date Issued: March 1997

New:

Amendment:

(2) Tax Discounts

Section 344 permits a municipality by by-law to allow discounts for the prepayment of taxes subject to a regulated maximum of 1.0% per month. Council may set a lower rate than the prescribed maximum.

Tax discounts are applicable only at the time of early payment.

Example 1: Amount required to pay current taxes of \$3,150.00 eligible for a discount of 4.0% [4 months x 1.0%].

Discount calculation: \$3,150.00 x 4.0% = \$126.00

Payment required: \$3,150.00 - 126.00 = \$3,024.00

Example 2: Calculation of discount on a partial tax prepayment subject to a discount of 4.0% [4 months x 1.0%], with a partial payment received of \$2,000.00.

This calculation involves computing the total credit to the tax roll, i.e.:

$$\$2,000.00 \div (1.00 - \text{discount})$$

$$\$2,000.00 \div (1.00 - 0.04)$$

$$\$2,000.00 \div .96 = \$2,083.33$$

Discount on \$2,000.00 tax prepayment:

$$\$2,083.33 - 2,000.00 = \$83.33$$

The following table illustrates the impact on the discount amount of varying payment dates and interest rates. The example presumes a partial payment received of \$2,000, with an October 31 due date:

Payment date	1.00%		0.75%		0.50%		0.25%	
	Discount	Credit	Discount	Credit	Discount	Credit	Discount	Credit
Sept. 30	.9900	2020.20	.9925	2015.11	.9950	2010.05	.9975	2005.01
Aug. 31	.9800	2040.82	.9850	2030.46	.9900	2020.20	.9950	2010.05
July 31	.9700	2061.88	.9775	2046.03	.9850	2030.46	.9925	2015.11
June 30	.9600	2083.33	.9700	2061.86	.9800	2040.82	.9900	2020.20

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(3) Interest on Tax Refunds

Subsection 343(1) specifies that where a municipality refunds taxes that were paid under protest, the municipality must pay interest on the excess taxes. The regulated rate of interest on or after March 1, 1997 shall be 4.75% per year, and before March 1, 1997 shall be the rate specified in the tax penalty by-law of the municipality. Interest payable on excess taxes shall be compounded on December 31 in each year.

Example: Calculation of interest on tax refund of \$2,000.00. Taxes paid October 31, 1996. Refund to be made June 30, 1997. The regulated rate of interest is 4.75% per year. The tax penalty rate is 1.25% per month.

Interest for November & December 1996:

Interest rate: (2 months x 1.25%) = 2.50%
Interest calculation: \$2,000.00 x 2.50% = \$50.00
Refund compounded at December 31, 1996:
\$2,000.00 + 50.00 = \$2,050.00

Interest from January 1, 1997 to February 28, 1997:

Interest rate: (2 months x 1.25%) = 2.50%
Interest calculation: \$2,050.00 x 2.50% = \$51.25

Interest from March 1, 1997 to June 30, 1997:

Interest rate: 4.75% per year
Interest calculation: \$2,050.00 x 4.75% x $\frac{4}{12}$ = \$32.45
Total refund: \$2,050.00 + 51.25 + 32.45 = \$2,133.70

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Amendment: √

11.3 Tax Sales of Real Property

(1) LEGAL REQUIREMENTS

Sections 363 to 381 (Part 11, Division 6) of *The Municipal Act* provides the authority and establishes the process for tax sales of real property.

Subsection 365(1) states that a municipality may not sell a property for taxes except by public auction.

The municipality must offer all properties for sale that are in arrears for the designated year. If at any point the arrears for the designated year and costs are paid, or the property owner enters into an agreement for payment of all outstanding tax arrears, the particular property must be withdrawn from the tax sale auction.

(2) TAX ARREARS LIST (Appendix 1)

Section 364 requires that a list be prepared of all properties that have **arrears of taxes of more than one year**. The list must be posted at the municipal office and must identify the properties and the amount of taxes owing for each year that taxes have not been paid. A new list should be prepared at the beginning of the calendar year and updated as necessary. Updates could be done, either by posting a new list, or crossing out a property on the existing list, as arrears are paid. The approved Tax Arrears List is attached as Appendix 1.

(3) COURTESY LETTERS

Given the significant onus on municipalities to serve property owners with a first and second notice of auction, it is recommended that considerable effort be devoted to obtaining voluntary payment of tax arrears.

At its option, municipalities could, for instance, begin to correspond with property owners as soon as taxes are overdue. This will either result in payment, or provide early warning of the circumstances that have resulted in non-payment. If the property owner has moved, steps should be taken to locate the respective party and pursue voluntary payment. If the property owner has died, the municipality will want to contact the executor of the estate. Any steps taken to achieve voluntary tax payment will reduce administrative time required for tax sale, and save the municipality considerable time and money.

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(4) REMOVING A PROPERTY FROM TAX SALE

➤ *To Withdraw a Property from auction (by payment)*

In the event a property owner wishes to redeem the property prior to the tax sale auction, the following example will assist municipalities in establishing the total amount payable:

<u>Current Year</u>	<u>Designated Year</u>	<u>Tax Arrears for Designated Year with Total Costs and Penalties</u>
2017	2016	2015 and earlier
\$1300.	\$1200.	\$2800. (includes \$400. penalties and costs)

\$2800. must be paid to withdraw this property from tax sale.

Penalties are to be calculated on the tax arrears for the designated year to the date that payment is made. Penalties are payable at the rate set by municipal by-law, which under the above noted regulation cannot exceed 1.25% per month.

Partial payments made on property taxes must apply to the oldest arrears first (subsection 340 (1)).

Appendix 2 provides information on the calculation of allowable costs.

➤ *To withdraw a property from auction (by agreement)*

To remove a property from being sold at the auction, a person may enter into an agreement with the municipality **before** commencement of the auction (subsection 369(1)(b)). **It should be noted that if a property owner is eligible to enter into an agreement, all outstanding arrears should be included, not just arrears for the designated year.**

As the wording of the Act does not stipulate a timeframe for negotiating an agreement, municipalities should have a policy, which would authorize the CAO to enter into an agreement under specified conditions. This would provide for last minute contact from any property owner who wishes to make arrangements for payment of property taxes and have the property withdrawn from auction.

Appendix 3 provides information on the terms and conditions of tax sale agreements.

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(5) THE TAX SALE PROCESS

Appendix 4 outlines a sample tax sale process. Note that the tax sale date has been set for September 7. Commencement of the tax sale process early in the year is recommended to ensure that timelines for personal and other types of service can be accommodated. The following steps outline the formal tax sale process from start to finish.

STEP ONE: Designate the Tax Sale Year

It is important to understand when the status of tax arrears makes a property eligible for tax sale. Section 365(1)(a) states that properties are eligible for tax sale when taxes are in arrears for the designated year. Section 365(2) states that council may, in any year, designate the previous year or any earlier year as the year for which properties in arrears must be offered for sale by auction to recover the arrears and costs.

For example, during the year 2012 council may, by resolution, designate 2011 for tax sale purposes. This permits the municipality to sell all properties that have taxes owing for any portion of 2010 and prior.

If a more recent tax sale has not been held, council **must** designate the 5th year before the current year for sale of properties with tax arrears.

STEP TWO: Address Exceptional Circumstances

The best time to address exceptional circumstances that could lead to problems for serving notice to the property owner is prior to filing the Notice of Tax Sale with Land Titles.

For instance, the municipality may know that the property owner is deceased. If so, a search must be conducted to obtain a copy of the Death Certificate. If the individual has died in Manitoba, the death certificate can be obtained by sending a letter to:

Vital Statistics
254 Portage Avenue,
Winnipeg MB R3C 0B6

The letter should include a \$25.00 cheque and information regarding the name, age, place and date of death of the individual. This will take a minimum of 3 weeks to process for a routine search, and longer if the individual has been deceased for several decades.

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LTO will also require that a search at the Court of Queen’s Bench (QB) be done to determine if a Grant of Probate or Letters of Administration has been done on behalf of the estate of the deceased person. If the individual has died in Manitoba, a province-wide search of Probate or Letters of Administration may be conducted through the Probate Registry in Winnipeg. The mailing address is:

Queen’s Bench, Probate Division
Room 100C, 408 York Avenue
Winnipeg MB R3C 0P9
Phone: (204) 945-3184

The written request should include the name and date of death of the individual, together with a cheque for \$22.50. The fee is \$20.00 for the search if date of death is provided (\$40.00 if it is not) and \$2.50 for photocopying fees of the Will. Fee amounts should be verified prior to submission.

If a Will has been probated or letters administered, and the municipality has contact information of the executor, the municipality may serve the executor without applying for substitutional service to LTO.

If there is no probated Will or letters of administration, a statement from the Probate Registry to that effect should be attached to the Request for Substitutional Service made to the LTO. Copy of LTO’s Request/Transmission Form and a Sample Affidavit are attached as Appendix 5. These may be submitted concurrent with filing Notice of Tax Sale (TAXSN) under subsection 366(1).

STEP THREE: Notice of Intent to Realize on Security (NOI) (Appendix 6)

➤ *Service from the Municipality to Registered Owner of Property*

The Farm Debt Mediation Act (Canada) offers special protection to a farmer with respect to any property owned by a farmer. The legislation provides that farmers in a state of insolvency may apply for assistance from the Farm Debt Mediation Services (located in Regina). Assistance ranges from review of financial affairs, to mediation, to a stay of proceedings from all creditors (including municipalities). The federal legislation requires that farmers who may qualify for assistance, be served with notice about how to apply.

The Farm Debt Mediation Act (Canada) defines “farmer” as an individual, corporation, partnership or other association of persons engaged in farming for commercial purposes. As the municipality has no means of determining whether any owner, including the

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owner of a commercial or residential parcel, is a “farmer”, the Notice of Intent (NOI) (Appendix 6) should be served on all property owners whose property is eligible for auction.

The Farm Debt Mediation Act (Canada) requires the Notice of Intent (NOI) to be provided to the property owner by personal service or registered mail at least 15 **business** days before the municipality commences tax sale proceedings on a property. Service by registered mail is deemed to be effected 7 **business** days after sending. To satisfy this 22 **business** day requirement the NOI should be sent at least one month before filing the Notice of Tax Sale with Land Titles.

If the municipality chooses to deliver the NOI to the property owner by personal service rather than by registered mail, keep in mind that there is one minor difference between personal service requirements under the tax sale provisions of *The Municipal Act* and the *Farm Debt Mediation Act* Regulations. This minor difference occurs when a property owner cannot be served personally and the notice is instead served on another adult person residing at the same address. In these circumstances, the *Farm Debt Mediation Act* requires that Notice also be sent by regular mail to the property owner. The notice must be mailed on the day that service is made on an adult person, or the following day. This means that if John and Jane Doe are served by leaving copies of the notice with an adult child, a copy of the notice should be mailed to John Doe and separate notice mailed to Jane Doe by regular mail within one day of the service.

When municipalities opt to use a process server, a copy of the notice(s) in envelope(s) addressed to the property owner(s) could be provided to the server, with instructions to immediately mail the envelope if personal service is not affected.

The recommended NOI form (Appendix 6) is available on the Agriculture and Agri-Food Canada website at:

http://www4.agr.gc.ca/resources/prod/doc/prod/pdf/AAFCAAC-FDMS-4805-E_Notic_e_of_Intent_to_Realize_on_Security.pdf

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If eligible farmers apply to the Farm Debt Mediation Service and qualify for a stay of proceedings, the municipality will be notified. The municipality cannot continue tax sale proceedings against a property until the stay terminates (30 days to 120 days maximum). Municipalities will want to establish and maintain contact with the case manager at the Farm Debt Mediation Service who will provide written confirmation when the stay has been terminated. The municipality may continue tax sale proceedings for the other properties that are in tax sale. Because of the priority of the Federal legislation, an adjournment of a parcel under stay of the *Farm Medication Act* (Canada) will not offend subsection 369(1)(c) of *The Municipal Act*. If the stay is ultimately lifted, the stayed property would re-enter the tax sale process on its own timeline.

Contact information for Farm Debt Mediation Services is as follows:

401-1800 Hamilton Street
Regina, Saskatchewan S4P 4K7
Toll free: 1-(866) 452-5556

STEP FOUR: Notice of Tax Sale to Land Titles (Appendix 7)

➤ *From the Municipality to LTO*

One copy of the Notice of Tax Sale (Forms PR1, and PR2 if required) must be presented to the Land Titles Office (LTO) for registration **at least** 120 days prior to the public auction (subsection 366(1)). Because of the work involved in searching titles and the possibility of having to request additional evidence for substitutional service orders, it is recommended that municipalities wait for instructions for service from LTO **before** setting the date of the public auction.

A copy of Form PR1 (and Schedule PR2) is attached as Appendix 7. If a number of properties are involved, the Schedule (Form PR2) should be added to the Notice of Tax Sale.

It is important that the property descriptions for the parcels listed for sale be complete and unambiguous. Descriptions such as part NW 1/4, or lots 5/8 will not be accepted for registration by LTO. In the first example, the portion of the quarter listed for sale should be included, for example, “sly 1580 ft. perp.”. In the second example, “*Lots 5, 6, 7, 8*” or “*Lots 5 and 8*” would be clear. The shorthand description for a parcel, such as 1-5-356 should be reported as Lot 1, Block 5, Plan 356 for LTO purposes.

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➤ *From LTO to the Municipality*

LTO will place notification of the pending tax sale on each of the titles of the affected properties. The District Registrar will also provide the municipality with the names and addresses of those with a registered interest in the property. The addresses provided by LTO will be exactly as shown in its records and municipalities will want to verify whether the addresses are current in advance of the service. This will reduce the possibility of having to re-serve one of the parties when the time clock is advancing toward the tax sale auction. If, for instance, municipalities are aware that the head office for XYZ Credit Union has changed from Lee Street to Jones Street, the party should be served at Jones Street. **Do not serve to an address that is known to be incorrect or out of date.**

If there is no address on the LTO records for a party with a registered interest, the District Registrar has stated that in all probability an order for personal service will be issued.

Service on Corporations will need to be effected by serving an officer or director. Tips on searching or verifying addresses of corporations and individuals are included in Appendix 10.

➤ *Notice of Discharge (Appendix 8)*

When sufficient payment has been made to remove a property from tax sale, subsection 371(2) requires that the CAO present a Notice of Discharge to LTO to remove the Tax Sale notification from title of the property. **This should be done as soon as possible after payment is received by the municipality.** If a regular cheque has been accepted as payment, discharge should not occur until the cheque clears the bank.

In the event that an agreement has been executed, the municipality may wish to consider leaving the Tax Sale Notice (TAXSN) on title of the property until the agreement has been fully satisfied. It will not be a problem for LTO if a TAXSN is filed for a subsequent year when a previous year's TAXSN is still on the certificate of title.

STEP FIVE: Set the Tax Sale Auction Date

After receiving instructions from the LTO District Registrar and prior to serving Notice of the Tax Sale to property owners and parties with a registered interest in accordance with subsection 367(1), the date of the auction sale must be set.

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Note that the date of the auction must not be less than 120 days from when the Notice of Tax Sale is received by LTO under subsection 366(1). Be aware that additional lead-time will be required in the event that a search must be done to locate either the property owner or a party with a registered interest. Every effort should be made to locate the affected parties prior to initiating the tax sale process.

STEP SIX: First Notice of Auction (Appendix 9 and 9(A))

Subsection 367(1) provides that at least 90 days before the public auction, the municipality must give notice of the auction to the registered owner and parties with a registered interest in the property.

Service of First Notice to Registered Owner of Property

➤ *Service On a Person*

For the First Notice of Auction, service to the property owner must be personal, or to an adult person residing at the address shown on the most recent tax notice. **The municipality may personally serve the property owner at any location.** Service of an adult person, other than the property owner, on the other hand, may only occur at the address on the most recent tax notice. This is provided the municipality knows for a certainty that the property owner continues to reside at this address.

For instance, if Jane and John Doe own property, and reside at 72 Smith Street (the address on the most recent tax notice), John may be personally served at 72 Smith Street and a separate copy of the notice may be left with John for Jane.

or

John and Jane may both be served at 72 Smith Street by leaving a copy of the notice with an adult child (age 18) who resides with Jane and John. The residency should be confirmed, along with the name and age of the adult being served.

or

Jane may be served by leaving a copy of the notice with an adult child (age 18) at 72 Smith Street. If the document server is made aware that the couple has separated and John now resides at 16 Jones Street, John will have to be served personally.

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➤ *Service on a Corporation*

When a corporation is the property owner, service should be effected at the address on the most recent tax notice. If the corporation has moved from the address on the most recent tax notice without providing a forwarding address, attempts must be made to locate the corporation. When the new address is confirmed, the address on the tax notice should be changed accordingly.

A certificate issued by the Companies office will identify the officer, directors or agents of a corporation. One of these officials should be personally served with the Notice of Tax Sale.

Tips on searching or verifying addresses of a corporation or individual are included in Appendix 10.

➤ *Unsuccessful Service*

There will be situations when the municipality's best attempts to serve the parties will fail. If a process serving company has been engaged, un-served documents will be returned with an explanation as to the attempts made to effect service. If the party is no longer at the address provided, this information will typically include efforts to locate a forwarding address. The municipality must continue to attempt service until there is success or the search is exhausted.

When the municipality is certain that there is no other recourse for serving one or more of the parties, an application for substitutional service may be made under subsection 367(3). Additional information on substitutional services is included in Appendix 11. Copy of LTO's Request/Transmission Form and a Sample Affidavit are attached as Appendix 5.

Municipalities should note that any order issued by LTO for substitutional service is effective for service of both the First and Second Notice of Tax Sale Auction.

➤ *Who Can Serve Tax Sale documents?*

There is no restriction as to who can serve the Tax Sale documents, though it is not recommended that elected officials perform this function. If the parties live in the municipality, the CAO, Public Works official or other member of the municipal staff may affect the service.

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If the party resides some distance outside the community or outside the province, a professional document server may be retained. There are a number of companies listed under “Process Servers” in the Yellow pages of the Winnipeg and rural phone books. The Process Server should be provided with the original and copies of the appropriate Notice of Auction and Affidavit of Service required for evidence of service on the registered owner. Costs may be recovered from the owner or purchaser of the property at tax sale.

The municipality does not have to use its own resources for serving documents. For administrative or safety reasons, the municipality may choose to engage a professional document server in most instances.

Service of First Notice of Auction to Parties with a Registered Interest

For the purpose of this notification procedure, those with a registered interest are considered to be individuals or corporations with a financial interest in property, exclusive of the property owner.

LTO is obligated to provide the address of record. The address from LTO may not be current, however, in which case the municipality should take steps to verify the information. Service of all parties must be effected at the current address. In that regard, verification before attempting service will save time and resources.

Parties with a registered interest must be served by a means that will give the sender an “Acknowledgement of Receipt”. This can be achieved by Personal Service or by using certified/registered mail. The party with a registered interest may be a corporation, such as a bank with head offices in Toronto. In this case, it is suggested that registered mail be used for service on head office and that a representative of a local bank which might hold the mortgage be personally served.

When addressing a registered mail envelope for service on a corporation, the officer, director or agent should be identified by name and title. In the case of an unincorporated business, the envelope should be addressed to the owner by name and title, e.g. John Smith, carrying on business as “Tripper Septic Tank Service”. In the case of a partnership, registered mail should be addressed to one of the partners, perhaps the first individual named on the title, e.g. David Brown, partner, Brown, Jones and Edwards. This type of registered interest may be common as many law firms, which are often partnerships, register Caveats and Judgements.

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Registered Mail service is available through a Canada Post outlet for a nominal fee, plus the applicable mailing rate. Confirmation of delivery can be obtained by calling 1-800-267-1177 or by checking the Canada Post website at www.canadapost.ca (Click the subject heading entitled “Personal”).

A hard copy of the card that has the signature and name of the individual who accepted delivery of the Notice may be received at an additional cost. Contact Canada Post to obtain this information. Because the signature will be considered “acknowledgement of receipt” of the notice of tax sale, municipalities should ensure that a copy of the signature card is obtained for those properties that proceed to tax sale.

Costs can be recovered from the owner or purchaser of the property at the tax sale.

STEP SEVEN: Second Notice of Auction (Appendix 12)

Municipalities should take note that there is a narrow window for delivering the Second Notice of Auction. It must be arranged for the time period between 30 and 50 days before the auction. There may be problems with service that did not arise during delivery of the First Notice of Auction. In that regard, municipalities will want to initiate service of the second notice 50 days, rather than 30 days before the auction, in order to deal with any unanticipated service problems.

Service of Second Notice of Auction to Property Owners

Subsection 367(2) states that the Second Notice of Auction may be delivered by any method whereby the sender is provided with an acknowledgement of receipt, such as registered/certified mail. Municipalities should be cautioned that in the event the property owner fails to accept registered mail from the municipality, there may be limited time left within the 20-day window to attempt personal service.

If the First Notice of Auction was served personally and without significant difficulty, personal service is recommended for the Second Notice of Auction.

Service of Second Notice of Auction to Parties with a Registered Interest

Once again, because of the narrow window for providing service, it is recommended that municipalities use the same method of service as was used for the First Notice. Although

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parties with a registered interest need only be served by a method that provides acknowledgement of receipt, whenever it is realistic, personal service could be the preferred method for ensuring the document is received.

STEP EIGHT: Public Notice of Auction (Appendix 13)

➤ *Posted*

Subsection 367(7) provides that at least 30 days before an auction, a list of the properties to be offered for sale at the auction must be posted at the following locations:

- a) in the municipal office
- b) on or near the affected property
- c) two other public places in the municipality

There are no restrictions as to the size or type of sign that should be posted on or near the property. Whenever possible, municipalities will want to avoid affixing the notice to any of the improvements or trees on the property. The road allowance directly fronting the property is recommended as an appropriate location. In an urban setting, the municipality may have no choice but to post the notice on the front door of the residence or business because of zero clearance between buildings.

For visibility, the Notice could be photocopied onto brightly coloured paper and stapled to a board on a stake, for placement in the ground. The Notice will contain the list of all properties which could be sold for taxes, and as such, municipalities may wish to highlight the information relating to the specific property which is being posted.

In order to ensure that documentation in support of the tax sale is complete, the date that notices were posted, location of the posting, and the name of the person who did the posting should all be included in the file.

➤ *Published*

The municipality must also publish notice of the auction on two occasions in the local newspaper, the first being at least 21 days, and the second at least 14 days before the auction.

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The public notice must contain the following information:

- a) date, time and location of the auction
- b) the description of each property offered for sale (legal description and civic address are recommended for inclusion)
- c) assessed value of each property
- d) the amount of arrears and costs owed to the municipality

Any other special terms or conditions respecting the purchase of land at the auction should be noted. Some of the recommended conditions may include, but are not limited to the following:

- form of payment that will be acceptable (cash, certified cheque, etc.)
- percentage of the purchase price to be paid as a deposit
- when the balance of the purchase price will be due
- that the deposit is non-refundable if the tax sale purchase is not concluded
- the date that the tax sale purchaser can obtain possession of the property
- that risk for the property lies with the purchaser during the interim period between the sale and registration of title by the tax sale purchaser

STEP NINE: Before the Tax Sale Auction

➤ *Set Reserve Bids*

Council should review the list of properties proposed for tax sale prior to the auction to determine its interest in the land.

Council, by resolution, has the option to:

- Allow all or any of the properties to be sold without a reserve bid. This means that the municipality could purchase the property for as little as \$1.00 and the tax arrears and costs owing on the property would not be recoverable. Properties that are not purchased at the sale would simply remain on the rolls as unpaid taxes.
- On all or any of the properties, set a reserve bid which must be in the amount of all tax arrears and costs. In our example the reserve bid would be \$4000. (amount owing for the Designated Year \$1200., plus Tax Arrears for Designated Year \$2400., plus costs and penalties \$400.). If there is no bid

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over the reserve price, the property is considered sold to the municipality for the amount of the reserve bid. The municipality must be prepared to take ownership of the land when it establishes a reserve bid. The property is not returnable to the rolls if no bids occur over the reserve price.

➤ *Appoint a Designated Officer*

If the municipality is interested in acquiring the property, council may assign one of its Designated Officers (DO) to bid on property at a tax sale. The DO should be directed by resolution as to the amount to be bid for the respective parcel or parcels of land. Council may authorize the DO to bid higher than the reserve bid in order to obtain the property.

➤ *Appoint An Auctioneer*

An auctioneer must be appointed to conduct the tax sale. There is no legislation that provides for the mandatory licensing of auctioneers. The municipality should attempt to engage the services of a professional auctioneer. If this is not feasible, municipalities could contract the services to an individual who is familiar with the requirements of tax sale auctions.

➤ *Reconfirm property ownership*

Because of the sometimes extended time frame from commencement of the tax sale process to the time of auction, there is a possibility that title to the tax sale property could change. It is strongly recommended that just prior to the auction, title of all tax sale properties be reconfirmed. If it is determined that a change of ownership has occurred, the entire auction should be adjourned to accommodate service on the new property owners of the respective parcel(s) of land. This means the new property owner should receive first and second notice of auction within the designated time frames. As always, it will be worthwhile to contact the new property owner(s) to determine the potential for voluntary payment of outstanding taxes.

➤ *Cancellation of tax sale (when necessary)*

Subsections 369(1) and (2) govern tax sale adjournment or cancellation. The municipality may not cancel the tax sale of one property without cancelling the entire auction, unless:

- a) the outstanding balance of tax arrears for the designated year and costs is paid,

or

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- b) the property owner enters into an agreement to pay all outstanding tax arrears and costs,
- or
- c) the municipality has been notified of a stay of proceedings under the *Farm Debt Mediation Act* (Canada).

If one of these conditions is satisfied, then the sale of the respective property must be withdrawn from the auction. If the municipality wishes to cancel the tax sale for any other reason, then the tax sale for all properties must be cancelled.

If the tax sale is cancelled, any outstanding tax arrears remain on the roll and costs must be added to the property taxes.

➤ ***Adjournment of tax sale (when necessary)***

Municipalities may wish to utilize the adjournment provisions of subsections 369 (1) and (2) to save a tax sale from being cancelled all together. If, for instance, the municipality has been successful in serving first and second notice to 8 parties but has failed to serve second notice on a 9th property owner, then the entire tax sale may be adjourned instead of cancelled. If the municipality need only serve the second notice on one remaining property owner, a timeframe of 30 to 50 days before the new date of auction will be required. For example an October 1, 2012 tax sale would require adjournment to November 20, 2012 to accommodate the timelines for Second Notice of Auction under subsection 367(2). It is recommended that the adjournment be more than the minimum lead time to accommodate the additional administration required for rescheduling of the auction, as well as the 30 to 50 day service requirement. For example, a 70-day adjournment, to December 10 would provide additional time for this purpose.

In the event that a tax sale is adjourned or cancelled, a Notice to this effect must be posted at the place (and before the time) of the auction. If known, the details of any rescheduled auction should be included. Under subsection 369(2), Notice of a rescheduled auction must be posted at least 14 days before the new date in the municipal office. When there is sufficient time, municipalities may also wish to publish Notice of the new date of Auction in the newspaper.

➤ ***Taking Possession of Property Prior to Tax Sale (when necessary)***

Once public notice has been posted on or near the property (at least 30 days before the auction), the municipality is entitled to take possession of it. The only circumstance under which the municipality would likely be interested in exercising this right is when the

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property owner has removed, or is threatening to remove improvements from the property which the municipality would otherwise be entitled to sell at auction. Section 368 outlines the manner by which possession is established, and provides for an application to Court of Queen’s Bench in the event that resistance is encountered. Municipalities will **not** want to exercise right of possession routinely. With possession comes the associated risks and liabilities – a situation which should be avoided where the circumstances do not warrant it.

If the municipality exercises possession rights, it will also want to take reasonable steps to secure the property from harm. Any costs associated with these measures may be added to the reserve bid.

Tax sale purchasers will have to make their own determination, in consultation with their lawyer, as to what steps, if any, can or should be taken to protect the property between the date of sale and becoming a registered owner.

STEP TEN: The Tax Sale Auction

Prior to commencing the auction, the auctioneer should be encouraged to read the terms and conditions of the tax sale aloud to those who are in attendance. Once the auction is completed, the municipality may wish to consider having the purchaser sign a copy of the terms and conditions of the sale. In this way, there will be a record that the purchaser has seen and had the opportunity to ask questions about ownership of property issues related to the tax sale process.

➤ *Participation of the Municipality*

The Designated Officer (DO) appointed by council prior to the tax sale, may bid on property for the municipality. The DO may bid higher than the municipality’s reserve bid if authorized to do so by a resolution of council.

➤ *Ineligible Purchasers*

Section 373 prohibits the following individuals from bidding, buying, or acting as an agent in buying property at tax sale, **unless acting as an agent of the municipality:**

- the auctioneer
- a member of council
- the Chief Administrative Officer
- a designated officer (at the discretion of the municipality)*

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-
-
- a spouse or dependent family member who resides with the auctioneer, member of council, Chief Administrative Officer or designated officer
 - any individual who has a pecuniary interest with the auctioneer, a member of council, Chief Administrative Officer or designated officer
 - a registered owner of the property. Land Titles will not permit an application for title where the one normally obligated to pay taxes (registered owner), is the purchaser at a tax sale.

**Council has the discretion to prohibit a designated officer, appointed under Subsection 130, from purchasing tax sale property in his/her interest. This should be brought to council's attention for specific consideration.*

The purpose of section 373 is to ensure a fair and equitable tax sale, and also to protect individuals from any allegation of conflict of interest. In this regard, the definition of both “family member” and “relationship involving a pecuniary interest” should be broadly considered. Individuals are advised to obtain legal advice if there is any question as to potential conflict of interest.

➤ ***Purchase Other Than by Municipality***

A member of the public may acquire property at tax sale for as little as \$1.00 when no reserve bid is established, and when there are no other bids greater than \$1.00. If the property is purchased for any amount less than the total of the tax arrears, the municipality will be required to cancel the balance of the taxes and costs. In our example this would be a cancellation of \$3599. in outstanding taxes and \$400. in costs and penalties. The purchaser would still be liable to pay the current year's taxes (\$1300. for the year 2009).

If there is a reserve bid established by the municipality, the purchaser cannot acquire the property for less than the amount of the reserve (\$4000.). If applicable, the current year's taxes (\$1300) would also be payable at the time of purchase (\$5300. in total).

STEP ELEVEN: After the Tax Sale Auction

➤ ***Purchase Other Than by municipality***

Once a parcel of land has been sold at auction, the successful purchaser must complete a tax sale application for filing with LTO. The municipality must provide a copy to the purchaser of the LTO form (PR6) which is attached as Appendix 14. The purchaser will

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also be required to complete the affidavit portion of the PR6 that declares they were not prohibited from purchasing the land under section 373.

In addition, the municipality will be required to complete the affidavit portion which advises that service of the First and Second Notice of Auction, as well as the posting and publishing requirements in support of the tax sale have been complied with. This information is contained on the Schedule to Form PR6 and is referred to as Form PR3, both of which are part of Appendix 14. No supporting documents for the PR3 are required, and **none will be accepted**. LTO will only review the Oath to ensure that it has been fully completed and properly sworn or affirmed.

The exception to this occurs when an Order for Substitutional Service has been issued by LTO. LTO will require completion of an affidavit by the municipality to confirm compliance with instructions contained in the Order. The Affidavit should highlight the specific conditions required by LTO and the manner in which the municipality has complied. Apart from the Order for Substitutional Service itself, exhibit evidence, such as tear sheets from the local newspaper should not be required.

Once all these forms have been provided, the purchaser may wish to deliver the documentation to a solicitor for completion of the property transfer document and subsequent filing with LTO.

➤ ***When the Municipality is Purchaser***

All of the above mentioned forms must be completed, with the municipality having responsibility for completion of the tax sale transmission (Appendix 14) in its own name. The municipality may send all required forms to LTO directly, or have the municipal solicitor complete the property transfer as appropriate.

The Real Properties Act requires that a lawyer witness all land transfer documents. An exception to this requirement may be granted for northern or remote communities that do not have access to a lawyer in their community. To apply for an exception, contact your district Land Titles Office.

Note: The Tax Sale Application should not be sent to LTO until the appeal period under subsection 377(2) (30 days from the date of auction) has expired.

➤ ***Surplus Funds***

After all tax arrears and costs have been paid, the municipality is entitled to any surplus funds from the tax sale auction up to an amount of \$200. If the surplus funds exceed

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\$200, the property owner and each person with an interest in the property is entitled to be notified of the existence of the excess and the rights they may have to claim it. The Court of Queen’s Bench will consider assignment of all the funds, including the initial \$200.

Notification must be delivered in accordance with subsection 367(2) (Acknowledgement of Receipt). It is recommended that Notification be made following expiration of the 30 day appeal period from date of auction. If a person with an interest in the property wishes to make a claim for all or a portion of the surplus funds, an application must be made to the Court of Queen’s Bench, which will decide the matter. A sample letter is attached as Appendix 15.

During the 3-year period that a former property owner has available to claim the surplus, the surplus funds may be held in a miscellaneous revenue account designated for tax sale surplus funds, or a liability account in the General Operating Fund. If there is no Order for Payment by the Court of Queen’s Bench within the 3-year period, the municipality is entitled to the revenue.

(6) LAND TITLES FORMS AND FEES

➤ *Forms*

For your convenience LTO forms are available online at the following website:

http://www.tprmb.ca/tpr/land_titles/lto_offices/forms.html

Forms can be purchased in bulk from Statutory Publications. They are located at 200 Vaughan Street, Winnipeg, Manitoba, R3C 1T5. Statutory Publications can be contacted at (204) 945-3101.

There are strict requirements for the completion of Land Titles Forms including the manner in which the legal description is presented and the format for any schedules attached to the statutory forms. Any questions regarding proper completion of the forms should be directed to the LTO District Registrar.

The Real Properties Act requires that a lawyer witness all land transfer documents. An exception to this requirement may be granted for northern or remote communities that do not have access to a lawyer in their community. To apply for an exception, contact your district Land Titles Office.

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➤ *Fees (Appendix 16)*

There are fees for the filing of documents with Land Titles Offices. These fees can be determined prior to commencing the Tax Sale Process and subsequently added to the costs to be reimbursed to the municipality. A list of the current Land Titles Forms and Filing Fees for the Tax Sale Process is attached as Appendix 15.

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Appendix 1— Sample Tax Arrears List - Section 364

Tax Arrears List

(Municipality) _____

Roll Number	Property Description	year Arrears	year Arrears	year Arrears	year Arrears	year Arrears	year Arrears	* Total

Dated this _____ day of _____ 20

(Name), Chief Administrative Officer

* Amounts may not include penalties

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Appendix 2 - Calculation of Allowable Costs

The “Fees, Discounts and Penalties Regulation” permits municipalities to charge a \$50 per parcel fee as compensation for the time spent by municipalities in dealing with the administration of a tax sale.

Municipalities are also entitled to recover the actual costs incurred to collect the taxes. These would include the costs of legal advice, third party tax sale administrators, mileage (if the municipality is serving the documents), process servers, Land Title Office filing fees, certified/registered mail, newspaper advertising, auctioneer, and fees for searching title of the property.

When calculating the cost of newspaper advertising and the fees for the auctioneer, it is recommended that the total costs be apportioned equally among the number of properties involved in the tax sale. For instance, if the auctioneer charges a flat rate fee of \$200 and \$10 per each of six parcels being auctioned (\$260.), then \$43.34 would be assessed to each parcel as costs of the auction. Municipalities may wish to consider assessing this fee only against those properties that actually proceed to tax sale. This means that the person who buys the property at auction will pay the cost of the auctioneer or any other costs directly related to hosting the auction. Applying auction related costs only to the purchaser may prevent a challenge from property owners who redeem the property in advance of the tax sale.

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Appendix 3 – Tax Sale Agreements

When establishing a policy regarding agreements, municipalities may wish to consider the following terms and conditions. There will be a range of circumstances which may be captured within an established policy, but provision should be made for council to consider exceptional situations. Terms and conditions for consideration include:

- a cash payment at the time of entering into the agreement
- a payment schedule, perhaps commencing in the near future, rather than allowing a number of months to pass before the first payment is to be made
- that lump sum payments will be accepted at any time during the term of the agreement
- the outcome if no payment is made, or a payment is missed, e.g. that the property will become eligible for tax sale
- that interest will accrue at the identified rate
- that the agreement will expire at a specified date
- that any payments made will be non refundable e.g. in the event that arrears are not fully paid and the property proceeds to auction
- that in the event the terms of the agreement are not fulfilled, the municipality will not consider entering into any further agreements
- that failure to pay current and designated year taxes will result in further tax sale proceedings
- that extraordinary circumstances (such as ability to pay), may be given consideration beyond the terms of the policy, at the discretion of council. (e.g. a farmer who cannot pay taxes but is expecting revenue from a crop which will be harvested in 6 months could be given permission to defer initial payment until that time)

Municipalities may wish to have an agreement either prepared or reviewed by the municipal solicitor. A generic tax sale agreement is also available for downloading from the AMM website www.amm.mb.ca . Click on “publications,” then “documents”, select the category “Sample By-Laws” and then “BL GenericTaxArrears”.

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Appendix 4 — Sample Tax Sale Process

Process	Timing	Sample Time Table
Municipality posts list identifying properties in arrears of taxes for more than one year.	Beginning of the year	January 3
Council designates year for which properties in arrears will be offered for sale by auction. S.365(2) MA	Typically early in the year	January 13
Notice of Intent (NOI) by personal service or registered mail to property owner before commencement of tax sale proceedings. (S. 21 of the <i>Farm Debt Mediation Act (Canada)</i>)	At least 22 business days before presenting Notice of Tax Sale Form to LTO	February 1
Notice of Tax Sale Form (PR1) presented to LTO for registration. S. 366(1)	At least 120 days before tax sale	March 5
Set Tax Sale Auction date. S.365(3)	Before preparation of notices	April 9
First Notice of Tax Sale Auction by personal service to property owner or adult person residing at address on most recent tax notice, and by Acknowledgement of Receipt (AR) method to parties with a registered interest. S.367(1)	At least 90 days before tax sale	April 26
Second Notice of Tax Sale Auction to property owner and parties with a registered interest by AR method. S.367(2)	Between 30 and 50 days before tax sale	July 19
Notice of Public Auction posted in Municipal Office, on or near the affected property, and at two other public places in the municipality. S. 367(7)(a)(8) MA. Municipality entitled to possession of the property from date of posting. S.368(1)	At least 30 days before tax sale	July 30
Notice of Public Auction published in newspaper or other publication having general circulation in municipality. S.367(7)(b)(8)	At least 21 days before tax sale	August 15
Notice of Public Auction published in newspaper or other publication having general circulation in municipality. S.367(7)(b)(8)	At least 14 days before tax sale	August 22
Municipality's interest in acquiring property and reserve bids established by resolution of Council. S.372	Prior to tax sale	August 25
Tax Sale By Public Auction		September 7
Tax Transmission Form (PR6 & PR3) provided to purchaser with appropriate affidavit portion of schedule completed.	As soon as possible following tax sale	September 8
Persons wishing to challenge the tax sale may bring action in court and file pending litigation order with LTO. S.377(2)	Within 30 days	October 7
LTO registers purchaser of property as owner of the property. S.377(3)	Following expiration of 30 day appeal period	October 9
Notice of Excess sent by AR method to property owner and parties with a registered interest, when proceeds of tax sale exceed tax arrears and costs by more than \$200.	Following expiration of 30 day appeal period	October 10
Each person entitled to notice of tax sale may apply to Court of Queen's Bench for an order for payment for all or part of proceeds from tax sale purchase. S.380(1)	Within 3 years from date of tax sale	September 7 (3 years after tax sale)

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Appendix 5 — Request For Substitutional Service and Sample Affidavit (LTO Form 5.1) (Where Submitted Concurrent with TAXSN) (on RDA - List 1. TAXSN, 2. Sub. Service Request)

Important Notice: By virtue of Section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

District of _____ **Enter name of Land Titles Office**

Request/Transmission

- Request ← **Mark this box**
 Transmission

1. **APPLICANT(S)** (Include address and postal code)

Insert name of Municipality

* *If additional room required, attach schedule*

← **this should not be required for request submission**

2. **APPLY BY VIRTUE OF**

**Request for substitutional service of notice of tax sale under TAXSN registered in series prior hereto upon
“Jane Doe”**

(attach evidence as schedule, if required)

← **attach affidavit for each request and insert alphabetical
identifier(s) in box**

3. **LAND DESCRIPTION**

Insert full legal description of land as in title or deed

Leave blank

→ **TO BE REGISTERED AS OWNER OF INTEREST IN MORTGAGE NO.**

→ **TO BE REGISTERED AS OWNER OF LAND TITLE NUMBER(S)**

* *If additional room required, attach schedule*

4. **CURRENT REGISTERED OWNER(S)**

Insert name(s) of current registered owner(s) as in title or deed

5. **ADDRESS OF APPLICANT FOR SERVICE** (Include postal code)

Leave Blank

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Appendix 5 — Request For Substitutional Service and Sample Affidavit (LTO Form 5.1) Cont'd

Important Notice: By virtue of Section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

District of _____ **Enter name of Land Titles Office**

Request/Transmission

- Request ← **Mark this box**
 Transmission

1. APPLICANT(S) (Include address and postal code)

Insert name of Municipality

* *If additional room required, attach schedule* ← **this should not be required for request submission**

2. APPLY BY VIRTUE OF

Request for substitutional service of notice of tax sale under TAXSN No. _____ upon “Jane Doe”

(attach evidence as schedule, if required)

← **attach affidavit for each request and insert alphabetical identifier(s) in box**

3. LAND DESCRIPTION

Insert full legal description of land as in title or deed

Leave blank

→ **TO BE REGISTERED AS OWNER OF INTEREST IN MORTGAGE NO.**

→ **TO BE REGISTERED AS OWNER OF LAND TITLE NUMBER(S)**

* *If additional room required, attach schedule*

4. CURRENT REGISTERED OWNER(S)

Insert name(s) of current registered owner(s) as in title or deed

5. ADDRESS OF APPLICANT FOR SERVICE (Include postal code)

Leave Blank

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Appendix 5 – LTO Form 5.1 Cont'd....

6. SIGNATURE OF ALL APPLICANTS 1. That I (we) am (are) of the full age of majority and have personal knowledge of the facts stated herein. 2. The deceased was at the time of death, the owner(s) of the within described land or mortgage. <i>* strike out inappropriate statement and initial. Delete clause 2 and initial</i>		
Print name of person signing, position and name of municipality ↓ (Name)	Applicant signs here ↓ (Signature)	DATE Y M D Insert Date
(Name)	(Signature)	
(Name)	(Signature)	
(Name)	(Signature)	
7. TYPE OF PROPERTY Check appropriate box <input type="checkbox"/> Residential <input type="checkbox"/> Farm <input type="checkbox"/> Commercial		
8. TYPE OF TRANSMISSION (if applicable) Leave blank <input type="checkbox"/> Mortgage Sale <input type="checkbox"/> Tax Sale <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Other		
F A R M L A N D S E V I D E N C E	9. FARM LANDS DECLARATION <i>(Strike out inappropriate statement(s) and initial) Leave Blank</i> The registration of this instrument does not contravene the provisions of <i>The Farm Lands Ownership Act</i> because: 1. The within Land is not farmland as defined in <i>The Farm Lands Ownership Act</i> ; or 2. The within farmland is exempt by Regulation 325/87R of <i>The Real Property Act</i> , i.e. it is 5 acres or less, or 3. The Aggregate holdings of farmlands by the Applicant is less than 40 acres; (including the lands in this instrument) or: 4. The Applicant is a Canadian Citizen, permanent resident of Canada, agency of the government, municipality, local government district or a Qualified Canadian Organization, Family farm Corporation, or a Qualified immigrant as defined in <i>The Farm Lands Ownership Act</i> ; or 5. The interest in farm land is being claimed pursuant to a bona fide debt obligation; or 6. The within Applicant is exempt by the Farm Lands Ownership Board (Order enclosed); or 7. Other (specify section of <i>The Farm Lands Ownership Act</i>) <i>* Strike out inappropriate statement(s) and initial</i>	
		DATE Y M D
	(Name)	(Signature)
	(Name)	(Signature)
Applicant or Agent		

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Appendix 5 – LTO Form 5.1 Cont'd....

10. ENCUMBRANCES, LIENS, AND INTERESTS (within document is subject to Instrument No.(s))

Leave blank

11. INSTRUMENT PRESENTED FOR REGISTRATION BY, include address and postal code

Insert name of CAO, address and postal code

LTO USE ONLY

FEES CHECKED	REFUND AMOUNT
<p>Certificate of Registration</p> <p>Registered this date _____ as No.</p> <p>I certify that the within instrument was registered in the _____ Land Titles Office and entered on Certificate of Title No. _____ for District Registrar</p> <p>New Certificate of Title No.</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">REQUEST TRANSMISSION</p>

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Appendix 5 – Schedule A to Form 5.1

Affidavit in Support of a Request for Substitutional Service

I, Jacob Workhard, Chief Administrative Officer of the Village of Century, request an Order for Substitutional Service upon Jane Doe, sole registered owner of property described as Lot 1, Block 5, Plan 12437, Parish of Sylvester, which is located in the Village of Century. I hereby affirm that I have personal knowledge of the following:

The property described above has tax arrears and is eligible for tax sale in the year 2009. The property owner is deceased and attached hereto to this my affidavit as Exhibit 1 is a copy of the Certificate of Death stating that the property owner passed away on December 6, 2005.

I have conducted a search through the Court of Queen's Bench Probate Registry, and attached hereto to this my affidavit as Exhibit 2 is notification that there is no probated will or letters of administration for Jane Doe.

I have also contacted the daughter of Jane Doe, namely Betty Smith of 662 Stately Avenue, Los Angeles, California 66054, Telephone (644) 567-8901 who advises that Bill Jones, who resides at 1432 River Drive in the City of Winnipeg is the executor of the estate. Bill Jones has verified to me by telephone that he is the executor of the estate of Jane Doe.

I therefore request an order for substitutional service of the Notice Tax Sale for the property owned by Jane Doe upon Bill Jones at the above mentioned address.

Affirmed before me on the ____ day of _____ 20 ____ at _____
in the Province of Manitoba.

(Commissioner for Oaths in and for the
Province of Manitoba)
My Commission expires

(Signature of Person Providing Evidence)

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Appendix 6 - Notice of Intent to Realize on Security

As required under Section 21 of *The Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor (Municipality)

Family name of farmer:

Given name of farmer:

Farmer's address:

Unit/Suite/Apt.

Street number

Street name

PO Box or Route #

Municipality (City, Town, etc.)

Province

Postal Code

The security being (type(s) of security)

On (asset(s))

Property (land and buildings)

“Insert the legal description of property subject to tax sale”

Dated this _____ day of _____, 20__ at _____

Print Creditor's Name

Signature of secured creditor or authorized representative

Creditor's phone number

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

- a) currently engaged in farming for commercial purposes; and
- b) insolvent, meaning that you are:
 - unable to meet your obligations as they generally become due; or
 - have ceased paying your current obligations in the ordinary course of business as they generally become due, or
 - the aggregate of your property is not, at fair valuation sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during or after the 15 business day period, by making an application to the Farm Debt Mediation Service.

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

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Appendix 7 – Notice of Tax Sale - TAXSN (LTO Form PR1)

<p>TO THE DISTRICT REGISTRAR OF THE _____ Name of LTO _____ LAND TITLES DISTRICT</p>			
<p>1. The _____ (name of municipality) hereby gives notice of its intention to sell by public auction the following described land for outstanding tax arrears and costs unless same are paid to the municipality before commencement of the auction.</p>			
2. REGISTERED OWNER(S)	TITLE/DEED NUMBERS(S)	LAND DESCRIPTION	ROLL NUMBER
Enter full name(s)	Enter Current Title/Deed Number(s)	Enter unambiguous legal description	Enter roll number
		<p>Mark with letter in Box, and identify the Schedule with that letter</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/> Attach schedule if additional room is required.</p>	
<p>3. Details as to the payment of tax arrears and costs may be obtained from:</p> <p>Municipality _____</p> <p>Address _____ Include all information</p> <p>Contact Person _____</p> <p>Phone Number _____</p>			

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Appendix 7 – LTO Form PR1 Cont'd

4. Set out year ↓
 1. The taxes in respect to the above-noted property(ies) are in arrears for the designated year. _____
 2. This notice is given pursuant to subsection 366(1) of *The Municipal Act*, CCSM c. M225.

Affix Municipal Seal

Insert date
↓
Date

Y | M | D

Type in name ↓ Sign here ↓

Name of Chief Administrative Officer of Municipality

Signature of Chief Administrative Officer of Municipality

5. Instrument presented for registration by, (include address and postal code), as above or
If same as in Box 3 – delete “or”;
if not the same – insert name, address and postal code.

LTO USE ONLY

FEES CHECKED	REFUND AMOUNT
Certificate of Registration Registered this date _____ as No. _____ I certify that the within instrument was registered in the Land Titles Office and entered on Certificate of Title No. for District Registrar New Certificate of Title No.	TAXSN

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Appendix 7 — LTO Schedule (Form PR2)

Additional Information		Page of Pages <input checked="" type="checkbox"/> complete	
<p>SCHEDULE</p> <p><input checked="" type="checkbox"/> Enter letter identifier of Schedule as noted in Box 2 of TAXSN</p>			
REGISTERED OWNER(S)	TITLE/DEED NUMBER(S)	LAND DESCRIPTION	ROLL NUMBER
<p>Sample</p> <p>Complete in same manner as in TAXSN</p>			
<p>This Schedule forms part of NOTICE OF TAX SALE,</p> <p>registered by _____ Enter name of Municipality</p> <p>Dated this _____ day of _____ 20</p> <p style="text-align: center;"><input checked="" type="checkbox"/> Enter date shown in Box 4 of TAXSN</p> <p style="text-align: right; margin-top: 20px;">_____ (Signature) CAO signs here</p> <p style="text-align: right; margin-top: 20px;">_____ (Signature)</p>			

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.34

Date Issued: January 2017

New:

Amendment:

Appendix 8 — Discharge (LTO Form 12)

Discharge

IMPORTANT NOTICE: By virtue of Section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

District of _____ **Enter name of LTO**

1. APPLICANTS (Include address)	
Enter name of Municipality that filed the TAXSN	
See schedule <input type="checkbox"/>	
2. NATURE OF APPLICATION (Attach evidence as schedule, if required) <input type="checkbox"/>	
<input type="checkbox"/> Full Discharge of Instrument No. _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Caveat <input type="checkbox"/> Other (specify) _____
9 Partial Discharge of Instrument No. _____	<input type="checkbox"/> Mortgage <input type="checkbox"/> Caveat <input checked="" type="checkbox"/> Other (specify) TAXSN
3. LAND (description) Complete only for a Partial Discharge. DO NOT Complete for a Full Discharge.	
Insert full legal description of the property/properties that was/were redeemed and from which the TAXSN is being discharged	
TITLE NUMBER(S) Enter title/deed number(s)	If Schedule is used, mark with letter in Box, and identify the Schedule with that letter. <input type="checkbox"/>
	See schedule <input type="checkbox"/>

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PART: 11 – TAX AND DEBT COLLECTION

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Date Issued: January 2017

New:

Amendment:

Appendix 8 – LTO Form 12 Cont'd

4. SIGNATURES OF APPLICANTS **Strike out inappropriate statement(s) and initial by party(s) signing*

1. Please discharge the above instrument ~~Delete – “IN FULL”, all OR and initial IN FULL, all money due or to grow due on same has been paid.~~

OR

IN PART, only as to the land set out in Box 3, receipt of \$ _____ acknowledged. **← may be filled in or deleted and initialled.**

2. The above instrument has not been assigned ~~except as follows:~~

Delete “except as follows:”

		Affix Municipal Seal	
		Date	
		Y	M D
		Insert Date	
Print Name ↓	CAO signs here ↓		
<input type="text"/> Witness (Name)	(Signature)		
Type “Chief Administrative Officer of the Municipality of _____” immediately below name			
Witness (Name)	(Signature)		
Witness (Name)	(Signature)		
Affidavit not required if CAO signs		<i>Complete affidavit of subscribing witness (see reverse) if the witness is other than an officer as defined under subsection 72(4) of The Real Property Act.</i>	

5. INSTRUMENT PRESENTED FOR REGISTRATION BY:

(Include address, postal code, contact person and phone no.)

Enter name of presenter – i.e. the CAO’s name, municipality, address and telephone

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PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.36

Date Issued: January 2017

New:

Amendment:

Appendix 9 — First Notice of Proposed Tax Sale Auction [Subsection 367(1)]

First Notice of Tax Sale Auction

(Municipality)

Pursuant to subsection 367(1) of *The Municipal Act (MA)*, notice is hereby given that unless the tax arrears for the designated year and costs in respect of the hereinafter described property are paid in full to the municipality or an agreement to pay the arrears and costs has been made under Section 369(1)(b) MA with the municipality, prior to the commencement of the auction, the municipality will on the ____ day of _____, 20__ at the office of the _____ at _____, at the hour of ____, proceed to sell by public auction the said property.

Registered Owner:

Address:

Roll Number	Legal Description	Arrears	Costs	Total
			*	

- The tax arrears amount shown above includes penalties calculated to the day of the sale.
- The property may be sold at the auction for less than the amount of the tax arrears.
- * Contact the municipal office by telephone for verification of costs. Any overpayment will be applied to payment of tax arrears.
- **IF THE PROPERTY IS SOLD, THE SALE IS FINAL AND ANY INTEREST YOU HAD IN THE PROPERTY BEFORE THE SALE WILL BE EXTINGUISHED.**
- There will not be an opportunity to redeem this property from tax sale and a property transfer application will proceed immediately after the auction.

Dated this _____ day of _____ 20__

(Name)Chief Administrative Officer

(Address)

(Phone Number)

Please turn over

**Municipal Act
Procedures Manual**

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.37

Date Issued: January 2017

New:

Amendment:

Appendix 9(A) - Affidavit of Service

Affidavit of Service

1. I, _____, of _____, located at _____, do solemnly affirm that on the _____ day of _____, 20____, at _____(time),

I did serve _____, who is (*circle one*)

- a) the registered owner of property described as _____
- b) a person or a representative of a corporation with a registered interest in property described as _____ OR
- c) an adult person residing with the registered owner of property at the address on the most recent tax notice for the property described as _____

with a copy of the document entitled “First (or Second) Notice of Proposed Tax Sale Auction”, copy of which is attached hereto and referred to as “Exhibit A” to this my affidavit at _____ (*insert address*) by leaving a copy with him/her personally.

2. I was able to identify the person by means _____

(*State the means by which the person’s identify was ascertained*).

OR

3. I ascertained that the person was an adult member of the household by means _____

(*State the means by which it was ascertained that the person was an adult member of the household*).

Affirmed before me on the _____ day of _____, 20____, at _____
in the Province of Manitoba.

(Commissioner for Oaths in and for the
Province of Manitoba)
My Commission expires _____

(Signature of Document Server)

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.38

Date Issued: January 2017

New:

Amendment: √

Appendix 10 – To Search for Corporations or Persons

In a situation where no address for service is shown on the Land Titles records, an order for personal service will be issued. This means that the municipality will be required to take steps to locate an individual or corporation.

Municipalities may also need to search company records to determine the name and title of corporate officers.

To assist in the search, the following resources may be useful:

- Local Telephone Directories, Information Service and Henderson Directory (allows a search by phone number or address)
- The Internet, using such directories as: www.teldir.com/ which has yellow and white pages of national and international phonebooks; www.whitepages.com/ has the white and yellow pages for Canada and the United States; or www.theultimates.com/white/ has the white pages for United States only.
- To search for companies doing business in Manitoba, call one of the following:
 - Department of Growth, Enterprise and Trade, Companies Office
Tel: Winnipeg (204) 945-2500 or Toll Free 1-888-246-8353

The office will be able to verify whether a company is registered and provide a printout of the company and director names and address may be provided.

- Insurance Council of Manitoba
A self regulating agency for Insurance Agencies and Brokers
Tel: Winnipeg (204) 988-6800 No Toll Free Line

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PART: 11 – TAX AND DEBT COLLECTION

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Page: 11.3.39

Date Issued: January 2017

New:

Amendment: √

Appendix 10 (Cont'd.) – To Search for Corporations or Persons

- Department of Finance, Financial Institutions Regulation Branch
To search for trust companies, cooperatives, credit unions and insurers
exclusive of Banks
Tel: Winnipeg (204) 945-282 or Toll Free 1-800-282-8069
This office will be able to verify phone whether a Trust, Cooperative or
Credit Union is registered in Manitoba.
- Federal Government of Canada, Office of the Superintendent of Financial
Institutions
To search the Head Office (only) of any Chartered Bank in Canada
Tel: Toll Free 1-800-385-8647

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Subject: 3 – Tax Sales of Real Property	
Page: 11.3.40	Date Issued: January 2017
New:	Amendment: √

Appendix 11: Substitutional Service

It will not be appropriate to ask for an Order for Substitutional Service merely because the location of the property owner is uncertain. LTO will not accept an affidavit stating that the municipality thinks the property owner has moved and might be difficult to serve. Steps will have to be taken to locate and serve the individual or corporation under subsection 367(1).

Only when the attempts at personal service have failed, will the municipality be able to apply for an Order for Substitutional Service. Appendix 5 is a sample Request for Substitutional Service and the affidavit that must be filed with the request.

➤ *Substitutional Service – LTO Instruction*

Municipalities must serve in accordance with instructions from LTO if such an Order has been made.

When LTO issues a substitutional order that requires service on the Public Trustee, fees are payable for opening a file and searching records. Contact the Public Trustee at (204) 945-2700 to determine the correct fees.

If first notice is served without the requirement for a substitutional service order, but the municipality is unable to achieve service of the Second Notice, a substitutional service order from LTO will then be required.

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PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.41

Date Issued: January 2017

New:

Amendment:

Appendix 12 - Second Notice of Proposed Tax Sale Auction [Subsection 367(2)]

Second Notice of Tax Sale Auction

(Municipality)

Pursuant to subsection 367(2) of *The Municipal Act* (MA), notice is hereby given that unless the tax arrears for the designated year and costs in respect of the hereinafter described property are paid in full to the municipality or an agreement to pay the arrears and costs has been made under Section 369(1)(b) MA with the municipality, prior to the commencement of the auction, the municipality will on the ____ day of _____, 20 ____ at the office of the _____ at _____, at the hour of _____, proceed to sell by public auction the said property.

**Registered Owner:
Address:**

Roll Number	Legal Description	Arrears	Costs	Total
			*	

- The tax arrears amount shown above includes penalties calculated to the day of the sale.
- The property may be sold at the auction for less than the amount of the tax arrears.
- * Contact the municipal office by telephone for verification of costs. Any overpayment will be applied to payment of tax arrears.
- **IF THE PROPERTY IS SOLD, THE SALE IS FINAL AND ANY INTEREST YOU HAD IN THE PROPERTY BEFORE THE SALE WILL BE EXTINGUISHED.**
- There will not be an opportunity to redeem this property from tax sale and a property transfer application will proceed following the auction.

Dated this _____ day of _____ 20__

(Name)Chief Administrative Officer
(Address)
(Phone Number)

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PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.42

Date Issued: January 2017

New:

Amendment:

Appendix 13 – Notice of Public Auction Sale of Lands for Arrears of Taxes [Subsection 367(7)]

Notice of Public Auction Sale of Lands for Arrears of Taxes

(Municipality)

Pursuant to subsection 367(7) of *The Municipal Act*, notice is hereby given that unless the tax arrears for the designated year of _____ and costs in respect of the hereinafter described properties are paid in full to the municipality prior to the commencement of the auction, the municipality will on the day of _____, 20____ at the office of the _____ at _____, at the hour of _____, proceed to sell by public auction the following described properties:

Roll Number	Description	Assessed Value	Amount of Arrears & Costs for Which Property May Be Offered for Sale

The purchaser of property at a tax sale auction will be responsible for the current year's taxes and for all costs associated with the transfer of title.

The tax sale is subject to the following terms and conditions:

The terms and conditions of sale are established by Council. For example, terms and conditions may include any or all of the following:

- *payment by cash or certified cheque only*
- *deposit of ___% of purchase price is required*
- *balance of the purchase price is due within __ working days*
- *the deposit is non-refundable if the tax sale purchase is not concluded*
- *any risk for the property lies with the purchaser during the interim period between the sale and registration of title by the tax sale purchaser*
- *sale is subject to a reserve bid in the amount of tax arrears and costs*
- *purchaser is responsible for current and subsequent taxes*
- *possession of the property shall be obtained at the expense of the purchaser*

Dated this _____ day of _____ 20____

(Name) Chief Administrative Officer

Address:

Phone Number:

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PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.43

Date Issued: January 2017

New:

Amendment:

Appendix 14 – Tax Transmission (LTO Form PR6)

Tax Transmission

IMPORTANT NOTICE: By virtue of Section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

District of _____ Enter name of LTO _____

1. APPLICANT(S) *Include address and postal code AND TENANCY/ESTATE/SHARE ACQUIRED*

Insert full, correct and legal name(s) of the purchaser(s) at tax sale and how title will be held. If corporation, show name only. If individual(s), include address, postal code and manner by holding title.

See Schedule



If Schedule is attached, insert alphabetical identifier in box and identify Schedule by that letter.

2. APPLY BY VIRTUE OF
Tax Sale held by (name of municipality) on (insert date of sale).

See Schedule



Attach Form PR3 and insert alphabetical identifier in box.

3. LAND DESCRIPTION

Insert full legal description of land as in title or deed.

9 TO BE REGISTERED AS OWNER OF LAND Check this box
CURRENT TITLE NUMBER (S) Insert title/deed number(s)

See Schedule



If Schedule is attached, insert alphabetical identifier in box and identify Schedule by that letter.

4. CURRENT REGISTERED OWNER(S)

Insert name(s) of current registered owner(s) as in title or deed.

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PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.44

Date Issued: January 2017

New:

Amendment:

Appendix 14 – LTO Form PR6 Cont'd

5. ADDRESS OF APPLICANT(S) FOR SERVICE *(Include postal code)*

Insert full address (including postal code) for Applicant(s) in Box 1.

6. SIGNATURE OF APPLICANT(S) All applicants must sign.

1. That I (we) am (are) of the full age of majority and have personal knowledge of the facts stated herein.
2. The registration of this instrument does not contravene the provisions of Section 373 of *The Municipal Act C.C.S.M Chap. M225*, because: I (we) am (are) not any of the following persons, or if I am, I (we) am (are) acting as an agent of the municipality in a purchase by the municipality:
 - (a) The auctioneer who conducted the sale of this property;
 - (b) A member of the council of the municipality that sold this property;
 - (c) The chief administrative officer or a designated officer prohibited from bidding by resolution of the municipality that sold this property;
 - (d) The spouse or dependant family member residing with any of the persons described above; or
 - (e) A person in which any of the individuals described has a pecuniary interest.

** Strike out inappropriate statement and initial.*

		DATE
		Y M D
		Insert date
→ Print name of person signing	→ Applicant sign here	
Name	Signature	
If corporate execution, officer signs, identifies position and affixes corporate seal. If applicant is municipality, identify position and municipality below name.		
Name	Signature	
Name	Signature	

7. TYPE OF PROPERTY

Check appropriate box

Residential

Farm

Commercial

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PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.45

Date Issued: January 2017

New:

Amendment:

Appendix 14 – LTO Form PR6 Cont'd

NOTE: SINGULAR INCLUDES PLURAL AND VICE VERSA WHERE APPLICABLE. "I" to be read as including all Applicants(s) whether individual or corporate.

8. FARM LANDS OWNERSHIP DECLARATION

The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act* because:

Strike out inappropriate statement(s) and initial.

1. The within land is not farm land as defined in *The Farm Lands Ownership Act*.
 2. The within farm land is exempt by Regulation 325/87R of *The Real Property Act*, i.e., it is 5 acres or less.
 3. The aggregate holdings of farm land by the Applicant is less than 40 acres (including the land in this instrument).
 4. The Applicant is a Canadian Citizen, permanent resident of Canada, agency of the government, municipality, local government district, Qualified Canadian Organization, Family Farm Corporation or a Qualified Immigrant as defined in *The Farm Lands Ownership Act*.
 5. The interest in farm land is being claimed pursuant to a bona fide debt obligation.
 6. The Applicant is exempt by the Farm Lands Ownership Board (Order enclosed).
- Other (specify section of *The Farm Lands Ownership Act*)

Particulars:

		DATE
		Y M D
<input type="checkbox"/> Print name here Name	<input type="checkbox"/> Sign here Signature	Insert date
Name	Signature	
Name	Signature	
Applicant or Agent		

9. ENCUMBRANCES, LIENS AND INTERESTS – The within document is subject to instrument number(s)

Leave blank

10. INSTRUMENT PRESENTED FOR REGISTRATION BY (include address, postal code, contact person and phone number)

Insert name and address of presenter

**Municipal Act
Procedures Manual**

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.46

Date Issued: January 2017

New:

Amendment:

Appendix 14 – LTO Form PR6 cont'd

LTO USE ONLY

FEES CHECKED	REFUND AMOUNT
<p style="text-align: center;">Certificate of Registration</p> <p>Registered this date _____ as No.</p> <p>I certify that the within instrument was registered in the _____ Land Titles Office and entered on New Title No. _____ for District Registrar</p>	<p>TAX TRANSMISSION</p>

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.47

Date Issued: January 2017

New:

Amendment: ✓

Schedule to Appendix 14 — LTO Form PR3

IMPORTANT NOTICE: By virtue of Section 194 of The Real Property Act, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to The Manitoba Evidence Act.

Additional Information

Page _____ of _____ Pages

↩ Complete ↲

SCHEDULE

↩ Insert alphabetical identifier noted in document to which this is the schedule.

I, Insert name of CAO of, Insert name of City, Town, Municipality, etc. in Manitoba, do hereby certify:

1. **THAT** I am the Chief Administrative Officer of the Insert name of Municipality.
2. **THAT** the lands and premises described in the within application are within the boundary limits of Insert name of municipality.
3. **THAT** the said lands and premises were sold at Tax Sale by Public Auction on Insert date of Tax Sale, under the provisions of *The Municipal Act*, C.C.S.M. Chap. M225, for arrears of taxes after Notices of Sale were properly served, published and posted as provided for by section 367 of *The Municipal Act*, and that the sale was openly and fairly conducted by an auctioneer.
4. **THAT** the said lands and premises according to the Assessment Roll are as follows:

Roll # _____ CT# _____

Attach schedule if additional room required.

↑ If attaching schedule, insert alphabetical that letter.

identifier and identify schedule with

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.48

Date Issued: January 2017

New:

Amendment:

Schedule to Appendix 14 Cont'd

DATED this _____ day of _____, 20____. ← Complete date

CAO signs here →
Name is typed here → _____, (name of officer)
Chief Administrative Officer

This Schedule forms part of, a transmission of land from

_____ applicant Delete "to"
to

DATED this _____ day of _____, 20____.

↗ Date as in Box 6 of Form PR6

(Signature Purchaser)

↑ Applicant(s) who signed in Box 6 of Form PR6.

(Signature Purchaser)

**Municipal Act
Procedures Manual**

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.49

Date Issued: January 2017

New:

Amendment:

**Appendix 15 – Sample Letter to Those Entitled to Notice of Tax Sale re
Excess of Funds at Auction**

Dear

Re: Excess from proceeds of a tax sale
Legal Description/Civic Address
Folio Number

On _____ (date) _____, the above noted property was sold at public auction to recover tax arrears.

The property was sold for a price that exceeds the tax arrears and costs by more than \$200. The excess amount is _____.

Per the terms of *The Municipal Act*, this letter will serve as notice that you are entitled to make an application to the Court of Queen’s Bench for an order for payment of all, or part of the excess.

Every person entitled to notice of the tax sale may apply to the Court within 3 years after the auction, for an order for such payment. You may wish to consult with a lawyer regarding the process required to bring this matter before the Court.

Yours truly,

John Smith, CAO
Municipality of

Municipal Act Procedures Manual

PART: 11 – TAX AND DEBT COLLECTION

Subject: 3 – Tax Sales of Real Property

Page: 11.3.50

Date Issued: January 2017

New:

Amendment: √

Appendix 16 — Fees on Tax Sale Proceedings

The following fees have been set for those documents required to be registered at a Land Titles Office.

FEEES ON TAX SALE PROCEEDINGS

<p>Tax Sale Notice (TAXSN) pursuant to ss. 366(1)</p> <p>Additionally, for each name including address of persons to be served.</p> <p>Additionally, where land affects property under <i>The Registry Act</i></p>	<p>\$41 registration fee</p> <p>\$10 per name including address provided.</p> <p>50% of the fees as prescribed under <i>The Real Property Act</i> Schedule of Fees Manitoba Regulation 171/89 as amended (\$100 flat fee plus \$10 for each person to be served).</p>
<p>Discharge pursuant to ss. 371(2)</p>	<p>\$41</p>
<p>Order of Substitutional Service including directions to municipality to make efforts to obtain address pursuant to ss. 366(4)</p>	<p>\$100</p>
<p>Tax Sale Application (TAPP) pursuant to ss.376(1) Additionally, an examination of each party served with notices required under ss 367(1)(c) and ss 367(2)(c)</p>	<p>\$70</p>

Municipal Act Procedures Manual

PART: 14 – MISCELLANEOUS

Subject: 1 – Public Notices

Page: 14.1.1

Date Issued: October 2012

New:

Amendment: √

14.1 Public Notices

(1) Legal Requirements

Public notices are an important and often mandatory way of informing the public of municipal proposals and activities. Councils are accountable to their citizens and responsible to ensure that municipal decision making processes are open and transparent. It is therefore essential that public notices include sufficient information so that citizens understand what is being proposed and their opportunity to participate in the decision making process.

Section 420 sets out public notice requirements, specifying how, when and where the notice must be given, as well as the information that must be included in the notice. Two types of notices are provided for:

- public hearing notices, to inform the public about an upcoming public hearing.
- public information notices, to provide general information about council's actions, or proposed actions.

Where there is a requirement for a public notice to be given, that notice must be given before council may conclude the matter.

(2) Public Hearing Notices

Matters requiring notice of a public hearing are:

Section	Public Hearing Matter
160(5)	continuation of an adjourned public hearing
162(2)	presentation of the annual financial plan of the municipality, before council may adopt the financial plan
162(3)	when a revision is made to the operating budget that increases transfers from surplus or reserves, increases tax revenue, or increases estimates included in the capital budget
168(2)	intention to spend from a special purpose reserve for a different purpose
290(2)	proposal to close a municipal road

Municipal Act Procedures Manual

PART: 14 – MISCELLANEOUS	
Subject: 1 – Public Notices	
Page: 14.1.2	Date Issued: October 2012
New:	Amendment: √

Subsection 420(1) provides that notice is given by:

- publishing the notice in a publication with general circulation in the municipality, during the period starting 40 days before the public hearing and ending seven days before the hearing. The notice must be published at least twice, and at least six days apart
- posting the notice in the municipal office for at least 14 days, during the period starting 40 days before the public hearing and ending seven days before the hearing

Subsection 420(2) sets out the required content of the public hearing notice:

- date, time and place of the public hearing
- general description of the matter to be considered
- that the purpose of the hearing is to allow persons to make a representation, ask questions or register objections
- that information about the matter and the procedures of the hearing are available for review

(3) Public Information Notices

Matters for which information is provided to the public, by notice, are:

Section	Public Information Matter
79(4)	intention to pass a by-law changing the number of councillors, before third reading
87(4)	intention of the municipality to pass or repeal a ward by-law, before third reading
174.(1)	intention to give first reading to a borrowing by-law (except for borrowing to fund a local improvement)
194	availability of the auditor's report and financial statements of the municipality for inspection at the municipal office

Municipal Act Procedures Manual

PART: 14 – MISCELLANEOUS	
Subject: 1 – Public Notices	
Page: 14.1.3	Date Issued: October 2012
New:	Amendment: √

Subsection 420(3) provides that a public information notice is given by:

- publishing the notice at least once in a publication having general circulation in the municipality, at least seven days before the proposed action
- posting the notice in the municipal office for at least 14 days

Subsection 420(4) sets out the required content of the public information notice:

- general description of the matter
- nature of the proposed action and when and where the action is to be taken
- that information about the matter and the procedures to be followed concerning any proposed action are available for review

(4) Samples

A sample public hearing notice and a sample public information notice are attached, as Appendices 1 and 2.

(5) Other Types of Notices

The Act also sets out specific notice requirements for other matters:

Section	Matters with Specific Notice Requirements
318(2)	information about a local improvement plan or special services proposal and a person's right of objection
356(2)	information about the auction of goods seized for taxes and the list of goods to be sold at the auction
367(7)	the notice of an auction for properties in tax sale must be posted in the municipal office for 30 days and must be in a form approved by the Minister
369(2)	information about the adjournment of a tax sale auction and the rescheduled auction

Municipal Act Procedures Manual

PART: 14 – MISCELLANEOUS

Subject: 1 – Public Notices

Page: 14.1.4

Date Issued: October 2012

New:

Amendment: √

Appendix 1 — Sample Public Hearing Notice

YOU ARE INVITED TO ATTEND

THE (NAME OF MUNICIPALITY)

20__ BUDGET HEARING

(Day), (Month), (Year)

(Time)

(Location)

At this time the Council will present the proposed 20__ financial plan for the municipality. The presentation will provide an overview of the proposed financial plan followed by a forum for questions and comments from the public. The purpose of the hearing is to allow any interested person to make a representation, ask questions or register an objection.

Copies of the proposed financial plan are available on our website at (insert web address) or upon request at the municipal office, (insert municipal office location address) during regular business hours. Questions and remarks may also be directed by letter to our Chief Administrative Officer or through our email address at (insert e-mail address).

Consultation with our community is an important component of the Municipality's budget process. Council encourages you to attend.

B. Jones
Chief Administrative Officer
(Name of municipality)

(Date)

(In accordance with subsection 162(2) of *The Municipal Act*)

Municipal Act Procedures Manual

PART: 14 – MISCELLANEOUS

Subject: 1 – Public Notices

Page: 14.1.5

Date Issued: October 2012

New:

Amendment: √

Appendix 2 – Sample Information Notice

YOU ARE INVITED TO ATTEND

THE (NAME OF MUNICIPALITY)

PUBLIC HEARING TO CONSIDER INCREASING (DECREASING)

THE NUMBER OF MEMBERS OF COUNCIL

(Day), (Month), (Year)

(Time)

(Location)

At this time the Council will present a proposed by-law providing for an increase (decrease) in the number of members of council at the next general election to be held (day) (month) (year), from (current number of members of council) to (proposed number of members of council). The hearing will include a council presentation on the proposed by-law followed by a forum for questions and comments from the public. The purpose of the hearing is to allow any interested person to make a representation, ask questions or register an objection.

The third reading of the by-law to increase (decrease) the number of members on council is scheduled to be given at the next regular meeting of Council to be held in the Council Chambers of the (name of municipality), on the (day) (month) (year) at (time, a.m. or p.m.).

Copies of the proposed by-law are available on our website at (insert web address) or upon request at the municipal office, (insert municipal office location address) during regular business hours. Questions and remarks may also be directed by letter to our Chief Administrative Officer or through our email address at (insert e-mail address).

Consultation with our community is an important component of the decision making process. Council encourages you to attend.

B. Jones
Chief Administrative Officer
(Name of municipality)
(Phone Number)
(Date)

(In accordance with subsection 79(4) of *The Municipal Act*)

Municipal Act Procedures Manual

PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM 1.1	Date Issued: June 2014
New:	Amendment: √

OM.1 Conflict of Interest

(1) Legal Requirements

Citizens expect municipalities to operate in a fair, objective and transparent manner. As elected officials, council members must make decisions that are in the best interests of the citizens and the municipality as a whole.

The purpose of *The Municipal Council Conflict of Interest Act* is to ensure that elected members of municipal councils and local Urban District Committees make decisions without being influenced by members who may have a personal interest in, and may benefit from, the outcome.

The various provisions in this Act work to ensure that citizens have confidence that the decisions of councils reflect the needs and interests of the municipality.

This Act set out rules for:

- disclosing a direct or indirect pecuniary interest and to refrain from voting, discussing or attempting to influence the matter – section 5
- making an annual statement of assets and interests. The statement is available for public inspection – sections 9 and 13.
- prohibiting the use of insider information for personal gain – section 14
- prohibiting the receipt of direct or indirect compensation for services or influence or attempt to influence – section 15
- prohibiting the influence of contracts, transactions, or benefits in which the member has a pecuniary interest – section 16
- granting the right to make a representation to council or a committee respecting personal interests affected by zoning, conditional uses or a business, realty or local improvement assessment – subsection 17(1)
- disqualifying a member from office for violating the Act – section 18
- requiring restitution from a member who realizes a pecuniary gain – subsection 21(2)

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PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM.1.2	Date Issued: June 2014
New:	Amendment: √

Conflict of interest provisions are also extended to:

- elected members of local urban district (LUD) committees; and
- non-elected members of council committees, except the provisions relating to the requirement for a statement of assets and interests under sections 9 to 13, and subsection 18(2)

Elected and appointed members have a personal responsibility to ensure that their behaviour does not violate *The Municipal Council Conflict of Interest Act*. There is no requirement for other members, the mayor/reeve, or the chief administrative officer to caution a member of a possible conflict of interest situation. However, council may apply to the court for a declaration that a member has violated the Act.

It is important to note that under subsection 20(1), an elector may also apply to the court for a declaration.

(2) **Disclosure of Interest**

Subsection 5(1) requires a member of council, a member of a LUD committee, or a non-elected member of a council committee to disclose any matter discussed during a meeting, in which the member has a direct or indirect pecuniary interest. The disclosure extends to the pecuniary interest of a spouse or child residing with the member.

The member must:

- disclose the general nature of the interest
- withdraw from the meeting without voting or discussing the matter, and
- refrain from influencing the matter

A record of the member's disclosure and the withdrawal of the member from the meeting is required, under section 6. That record must be available for inspection by any person, without charge, during the municipality's normal business hours.

A sample form of a disclosure of interest is attached, as Appendix 1

Municipal Act Procedures Manual

PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM.1.3	Date Issued: June 2014
New:	Amendment: √

(3) Statement of Assets and Interests

Form and Content of Statement

Subsection 9(1) requires all members of council and elected Local Urban District committee members to annually file a Statement of Assets and Interests with their municipality's CAO, no later than November 30 each year. A sample Statement is attached, as Appendix 2.

The Act specifies the types of assets and interests that must be included. For example, members must disclose real estate holdings and personal financial interests that they, or their spouse or dependant children, have.

Starting in 2014, council members must disclose all real estate holdings in the Province of Manitoba.

The Act also states that certain things do not have to be disclosed. For example, members do not have to disclose their primary residence, personal bank accounts, Canada Savings Bonds or retirement investment savings plans.

It is important to note that only the nature of the financial interest must be disclosed, not the financial details.

A list of assets and interests to be disclosed is attached, as Appendix 3.

Public Disclosure of Statement

Section 13(1) requires that members' statements be available for inspection by any person without charge during the municipality's normal business hours. An individual may examine at any member's statement, but would not be able to take a copy of it.

(4) Penalties

Violation of any provisions of *The Municipal Council Conflict of Interest Act* may result in disqualification from office and an order for restitution by the Court.

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PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM.1.4	Date Issued: June 2014
New:	Amendment: √

(5) Frequently Asked Questions

It is up to council members to ensure they are in compliance with the requirements and obligations as set out in *The Municipal Council Conflict of Interest Act*. Council members should seek legal advice if they are unsure as to whether they may be in a conflict.

CAOs, however, are often asked questions by council members regarding conflict of interest and will typically review requirements of what needs to be included in the Statement of Assets and Interests.

Appendix 4 contains a list of frequently asked questions about conflict of interest.

**Municipal Act
Procedures Manual**

PART: OTHER MATTERS

Subject: 1 - Conflict of Interest

Page: OM.1.5

Date Issued: June 2014

New:

Amendment: √

**Appendix 1 – Disclosure of Interest of a Member of Council
During a Meeting**

**MUNICIPAL COUNCIL CONFLICT OF INTEREST ACT
[Subsection 5(1)]**

The (name of municipality)

With reference to _____, motion _____
(agenda item number) (number)

(description)

arising at a meeting of _____
(Council, Local Urban District Committee, Committee of Council)

_____, a member of council disclosed a personal
(name)
interest in the matter before council.

Certificate of Designated Officer

Upon declaring an interest in agenda item _____, resolution #_____, said councillor withdrew from the council chamber, without further participation in the matter under discussion.

(Date)

(Signature of designated officer)

**Municipal Act
Procedures Manual**

PART: OTHER MATTERS

Subject: 1 - Conflict of Interest

Page: OM.1.6

Date Issued: June 2014

New:

Amendment:

Appendix 2 — Statement of Assets and Interests

MUNICIPAL COUNCIL CONFLICT OF INTEREST ACT

[Section 9(1)]

The (name of municipality)

Member of Council: _____

(name)

I declare the following to be my assets and interests in accordance with the provisions of the said Act:

Real Estate in Manitoba:

Personal Financial Interests (No financial detail required - nature of holding only):

(Date)

Councillor / Head of Council /
LUD Committee Member)

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Page: OM.1.7	Date Issued: June 2014
New:	Amendment: √

Appendix 3 – Assets and Interests Required to be Disclosed

LAND:

- All land in the Province of Manitoba owned by the member of council or his/her dependants (excluding the members' principal residence);
- All land in Manitoba owned by a corporation, or a subsidiary of a corporation, in which the member of council or his/her dependants owns a 5% or more interest;
- Any interest in property in Manitoba to which the member of council or his/her dependants is entitled under a trust and property in the municipality over which the member of council or his/her dependants is an executor of a will, administrator of an estate or a trustee;

(Note: Starting in 2014, council members will be required to disclose any interests in land in the Province of Manitoba.)

CORPORATIONS:

- The name of any corporation and every subsidiary of every corporation in which the member of council or his/her dependants holds a 5% or more interest.

EMPLOYERS:

- The name of any person or company that pays the member of council or his/her dependants for services performed as an employee, officer, director, manager, officer, director manager, proprietor or partner.

INVESTMENTS:

- Bonds and debentures held [excludes government bonds (federal, provincial and municipal) and Treasury Bills];
- Holdings in investment funds, mutual funds, investment trusts, or similar securities (excluding RRSPs, Home Ownership Savings Plans accounts and term deposits in banks, credit unions or financial institutions, pension plans and insurance policies)

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Subject: 1 - Conflict of Interest	
Page: OM.1.8	Date Issued: June 2014
New:	Amendment: √

Appendix 3 – Cont'd

GIFTS:

- The nature and name of the donor of every gift, excluding gifts from family members, given to a member of council or any of his dependants the value of which is greater than \$250.

CONTRACTS WITH THE MUNICIPALITY:

- The general nature of any contract or financial transaction between the municipality and the councillor or /his/her dependants, or any corporation in which they hold an interest.

It is important to remember that the value of assets and interests is not to be included in the statement (Section 11);

Members of council are not required to include any asset or interest worth less than \$500 or to disclose any asset or interest acquired by a dependant more than two years before the person was elected to council for the first time (Section 11).

Municipal Act Procedures Manual

PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM.1.9	Date Issued: June 2014
New:	Amendment: √

Appendix 4 – Frequently asked Questions about Conflict of Interest

What is a conflict of interest?

A conflict of interest occurs when a person in public life is in a position where a personal interest may, or may appear to, conflict with their role as a municipal councillor. *The Municipal Council Conflict of Interest Act* generally defines a conflict of interest as a pecuniary interest.

What is a pecuniary interest?

A pecuniary interest is a financial interest that a council member or their dependant (spouse, common-law spouse or dependent child who resides with them) may have. A pecuniary interest may be direct or indirect, and is defined in the Act. If a council member has any questions regarding whether they have a pecuniary interest, they may wish to consult a solicitor or an accountant.

How does the disclosure procedure work?

If a council member has a pecuniary interest with respect to council related business, they must:

- disclose the general nature of the interest;
- withdraw from the meeting without voting on, or discussing the matter; and
- refrain from attempts to influence any decision on the matter.

Does disclosure apply to council meetings only?

No. It applies also to committee or subcommittee meetings, or an agency, board or commission where a council member serves as an elected official, for example a Board of Revision. It also includes Local Urban District (LUD) committee meetings.

Does this legislation cover a council member's family?

Disclosure extends to the direct or indirect pecuniary interests of a spouse, common-law spouse or a dependent child who resides with a council member. For example, if a business deal involving the municipality and a council member's dependant comes before council, that fact should be disclosed and the disclosure procedure followed.

How is the disclosure recorded?

The CAO or recording secretary must record the nature of the council member's disclosure and their withdrawal from a meeting. A central record is required to be kept by the CAO to show compliance.

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PART: OTHER MATTERS

Subject: 1 - Conflict of Interest

Page: OM.1.10

Date Issued: June 2014

New:

Amendment: √

Can the public see the record?

Yes. The record will reflect the council member's statement regarding the disclosure, withdrawal from, and time of their return to the meeting.

Why do members of council and elected Local Urban District committee members have to file a Statement of Assets and Interests?

Statements of Assets and Interests are required under *The Municipal Council Conflict of Interest Act* and must be filed annually with the CAO. The Statement, an integral part of conflict of interest legislation, enables citizens to assess whether a council member may have a conflict of interest. It also serves as an important means of demonstrating accountability.

What do council members have to disclose in their Statement of Assets and Interests? Do they have to provide all their private financial details?

The assets and interests that a member must disclose are set out under *The Municipal Council Conflict of Interest Act*.

They must disclose real estate holdings in the Province of Manitoba and personal financial interests that they, or their spouse or their dependent child have. Only the nature of the financial interest must be disclosed, not the financial details.

The Act also states that certain things do not have to be disclosed. For example, council members do not have to disclose their primary residence, personal bank accounts, Canada Savings Bonds, or retirement investment savings plans. Their income, spouse's income or child's income also does not have to be disclosed – they only need to record the employer's name.

If a council member is not sure what to disclose, who do they talk to?

Typically, the CAO will review requirements of what needs to be included in the Statement of Assets and Interests form with council members, to ensure members understand the rules and their obligations.

If a member remains unsure about what should be included, they should ask the CAO. However, in cases where a member's assets and interests are complex, it is always advisable to obtain legal advice, to ensure the Statement is filed in accordance with the Act.

Do gifts have to be disclosed?

Yes. Council members must declare any gift valued at \$250 or more. Gifts received continue to be part of the list of assets until the asset or interest is disposed of.

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PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM.1.11	Date Issued: June 2014
New:	Amendment: √

Is there a special form for the Statement of Assets and Interests that must be filed?

The CAO will provide council members with a Statement of Assets and Interests form. A sample form is available in The Municipal Act Procedures Manual, which is available in every municipality. The sample form is simple and easy to use. Only information required by the legislation needs to be included on the form (eg. members do not include their residential address).

When does the Statement of Assets and Interests form have to be filed?

Statements must be filed by November 30 annually. It must be kept up to date and any changes noted within 30 days.

What does the CAO do with the Statement?

The CAO will examine the statement to make sure it has been completed. The CAO does not verify the accuracy of the statement; all council members have an obligation to accurately disclose their assets and interests. The CAO will keep the statement on file.

Is the Statement of Assets and Interests a public document?

Yes. Statements of Assets and Interests will be available for public inspection by any person without charge during the municipality's normal business hours. An individual may look at any member's statement, but would not be able to take a copy of it.

What happens if members don't file their statement in accordance with the Act?

If a member does not file in accordance with the Act by the deadline, the CAO will immediately follow-up by sending a written notice. The member must file their Statement within 30 days of receiving the notice.

There are serious penalties for not filing as required. Ultimately, a member found by the Court to have violated the Act is disqualified from council.

The municipality or any voter could apply to the Court, who would hear the evidence. If the Court determines the council member violated the Act, the member's council seat will be declared vacant.

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PART: OTHER MATTERS	
Subject: 1 - Conflict of Interest	
Page: OM.1.12	Date Issued: June 2014
New:	Amendment: √

What other conflict provisions apply to council members?

Members of council cannot:

- use insider information (information not available to the public) for personal gain
- receive compensation for rendering service in a matter before council
- attempt to influence the vote of another council member

These provisions do not prohibit council members from appearing before council as a resident affected by planning, zoning, or an assessment matter. However, they should not vote or participate in the matter to be decided.

What if a conflict of interest is alleged?

A voter or the council may bring a conflict of interest allegation to court. Only the court has the authority to decide whether a violation of the legislation has occurred. If a council member is found guilty they may be disqualified from office.

What power does the court have?

The court would hear the evidence and deal with the allegation of conflict. If a council member is disqualified and the seat declared vacant, restitution could be directed. In some circumstances, failure to comply with the Act could render a transaction of the municipality void. Since this is a complex situation, legal advice should be obtained.

What if the conflict of interest happened inadvertently?

A judge can determine whether there was an unknowing or inadvertent violation of the Act and permit the council member to retain their seat on council.

How far back can someone go to allege a conflict of interest?

An application must be brought within six years of the alleged violation.

Municipal Act Procedures Manual

PART: OTHER MATTERS	
Subject: 2 - Board of Revision	
Page: OM.2.1	Date Issued: April 2022
New:	Amendment: √

OM.2 Board of Revision

(1) Legal Requirements

The Municipal Assessment Act requires municipalities to establish Boards of Revision each year to hear and decide upon applications for revisions to the assessment roll.

(2) Composition of the Board of Revision

By resolution, Council appoints a Board of Revision (Board) of not less than three persons whose members are:

- all councillors, or;
- a combination of councillors and citizen members, or
- all citizen members.

Council also, by resolution, appoints a Board member to serve as Chairperson and a person to serve as Secretary of the Board. All appointments are for a one year term, commencing on the date council approves the resolution. To expedite the hearing process, the Board may appoint from its members a one person panel to hear applications respecting single family residential properties (classified as Residential 1 for property tax purposes).

Council may, by by-law, provide for the payment of compensation to members of the Board who do not receive remuneration as members of the Council.

(3) Board of Revision Guide

Municipal Relations publishes “Boards of Revision; A Guide for Board Members and Secretaries”. This Guide provides detailed information on the roles and responsibilities of the Board, appellant’s responsibilities, sequence of events at hearings, and decisions of the Board. Copies of the Guide and Orders of the Board of Revision forms can be obtained by contacting:

Director of Assessment Services
500-800 Portage Avenue
Winnipeg, MB R3G 0N4
Phone: (204) 945-2572
Fax: (204) 948-2780
E-mail: assessment@gov.mb.ca

Municipal Act Procedures Manual

PART: OTHER MATTERS

**Subject: 3 - Municipality Responsibility for the
Manitoba Building Code**

Page: OM.3.1

Date Issued: January 2017

New:

Amendment: √

OM.3 Municipal Responsibility for the Manitoba Building Code

(1) Legal Requirements

The Buildings and Mobile Homes Act has adopted the Manitoba Building Code as the minimum construction standard for the Province of Manitoba.

Section 4 of *The Building and Mobile Homes Act*, indicates that “notwithstanding anything to the contrary in any other Act of the Legislature, each municipality unless excluded under clause 2(2)(c), shall adopt and enforce any construction code or building construction standard adopted, established or prescribed under section 3 for the province or the municipality or the part of the province in which the municipality is situated, and may make such by-laws as are necessary for those purposes.”

Some municipalities have been given the authority to administer and enforce all parts of the Manitoba Building Code. This designated authority is granted by the Minister of Growth, Enterprise and Trade, who may also revoke that authority after it is given.

(2) What is the Manitoba Building Code?

The Manitoba Building Code:

- is a code of minimum regulations for public health, fire safety, and structural sufficiency with respect to the public interest.
- establishes a standard of safety for construction of buildings, including extensions or alterations, the evaluation of buildings undergoing a change of occupancy and upgrading of buildings to remove an unacceptable hazard.

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PART: OTHER MATTERS	
Subject: 3 - Municipality Responsibility for the Manitoba Building Code	
Page: OM.3.2	Date Issued: February 2003
New:	Amendment: √

- provides the necessary means to verify the buildings:
 1. are structurally sound
 2. provide for the safety of the building occupants
 3. detect and resist the spread of fire
 4. will perform in Manitoba climate
 5. are durable and will resist deterioration
 6. impose no danger to buildings on neighbouring property
 7. use energy efficiently
 8. are cost effective
 9. protect the safety of the fire fighters during a fire

(4) Types of Buildings Under the Manitoba Building Code

Part 9 Buildings

All municipalities are responsible for the administration and enforcement of the Manitoba Building Code for buildings classified as Part 9 type buildings.

Municipal Act Procedures Manual

PART: OTHER MATTERS	
Subject: 3 - Municipality Responsibility for the Manitoba Building Code	
Page: OM.3.3	Date Issued: January 2017
New:	Amendment: √

Part 9 buildings are 3 stories or less in building height, have a building area not exceeding 600 square metres and have a building classification of:

- Group “C” - residential
- Group “E” - mercantile
- Group “F-2” - medium hazard industrial
- Group “F-3” - light hazard industrial

Part 3 Buildings

Some municipalities have been given the authority by the Minister of Growth, Enterprise and Trade to administer and enforce the Manitoba Building Code for buildings classified as Part 3 type buildings. For those municipalities that have not been granted this authority, Growth, Enterprise and Trade, Office of the Fire Commissioner is responsible to administer and enforce Part 3 of the Manitoba Building Code.

Part 3 buildings exceed 3 stories in building height and have a building area exceeding 600 square metres. Part 3 type buildings also include all buildings, regardless of height or building area classified as:

- Group “A” - assembly
- Group “B” - institutional
- Group “F-1” - high hazard industrial

The following chart sets out examples of the types of buildings municipalities are responsible for under Part 9 and Part 3 of the Manitoba Building Code.

**Municipal Act
Procedures Manual**

PART: OTHER MATTERS

**Subject: 3 - Municipality Responsibility for the
Manitoba Building Code**

Page: OM.3.4

Date Issued: January 2017

New:

Amendment: √

BUILDINGS STANDARDS ADMINISTRATION

RESPONSIBILITY CHART

ALL MUNICIPALITIES	DESIGNATED MUNICIPALITIES
<p>PART 9:</p> <p>HOUSES & SMALL BUILDINGS</p> <p>(Note: some exceptions)</p> <p>less than 600 sq. metres</p> <p>3 stories or less</p> <p>and</p> <p>classified as Group C, D, E, F2 & F3</p>	<p>PART 3:</p> <p>ASSEMBLY & LARGE BUILDINGS</p> <p>(Note: some exceptions)</p> <p>greater than 600 sq. metres</p> <p>more than 3 stories</p> <p>and all other buildings</p> <p>classified as Group A, B & F1</p>
<p>EXAMPLES</p> <p>Group C: (residential) e.g. houses, apartments, motels</p> <p>Group D: (personal services) e.g. offices, banks, hairdressing shops</p> <p>Group E: (mercantile) e.g. department stores</p> <p>Group F2: (medium hazard industrial) e.g. repair garages, printing plants, warehouses</p> <p>Group F3: (light hazard industrial) e.g. storage garages, small workshops, warehouses</p>	<p>EXAMPLES</p> <p>Group A: (assembly) e.g. theatres, schools, day cares, churches, restaurants, halls, arenas, bleachers, grandstands</p> <p>Group B: (institutional) e.g. hospitals, care homes, prisons</p> <p>Group F1: (high hazard industrial) e.g. bulk plants, spray paint operations, woodworking plants, operations processing materials</p> <p>Group C, D, E, F2 & F3: larger than 600 sq. metres or more than 3 stories in height</p>

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PART: OTHER MATTERS	
Subject: 3 - Municipality Responsibility for the Manitoba Building Code	
Page: OM.3.5	Date Issued: January 2017
New:	Amendment: √

(5) Building By-law

To comply with the duty to administer and enforce the Manitoba Building Code for Part 9 buildings (and for some municipalities, Part 3 buildings), municipalities must have in place a building by-law. *Municipalities may not absolve or reduce their liability by not having a building by-law.*

It is recommended that the building by-law set out:

1. Scope and definitions
2. Application
 - new construction
 - existing construction
 - exemptions
3. Permits and Licenses
 - building Permit
 - plumbing Permit
 - occupancy Permit
4. Responsibility and Obligation
 - obligation of owner
 - obligation of constructor
 - obligation of vendor or supplier
 - obligation of authority having jurisdiction
 - powers of authority having jurisdiction
5. On-site review
 - building on-site review
 - plumbing on-site review
6. Equivalentents
7. Appeals
8. Penalties
9. Fees
10. Effective date

The Office of the Fire Commissioner, Growth, Enterprise and Trade can assist municipalities in developing a building by-law. For general information with respect to preparing a by-law, refer to Part 5.2, “Preparing a By-law”.

Municipal Act Procedures Manual

PART: OTHER MATTERS

**Subject: 3 - Municipality Responsibility for the
Manitoba Building Code**

Page: OM.3.6

Date Issued: January 2017

New:

Amendment: √

(6) Building Inspectors

The building inspector represents the municipality in ensuring that building construction complies with the minimum standards of the Manitoba Building Code, thus reducing the municipality's exposure to legal liability.

The building inspector also plays a paramount role in ensuring that buildings have an adequate degree of life safety and fire safety, thus ensuring that the community is a good place for all to live in.

Municipalities seeking building inspector services have several options:

- Hire a local building inspector
- Share a building inspector with other municipalities, for example through a Planning District
- Contract with the Office of the Fire Commissioner

**Contact the Office of the Fire Commissioner for information
about the qualifications of buildings inspectors, or
about any of the above hiring options.**

A list of the Manitoba regional offices is provided on the following page.

(7) The Office of the Fire Commissioner, Growth, Enterprise and Trade

The Office of the Fire Commissioner may assist municipalities through:

Consultation

The Office of the Fire Commissioner will provide consultative services about code interpretation and administration, including development of building by-laws.

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Subject: 3 - Municipality Responsibility for the Manitoba Building Code	
Page: OM.3.7	Date Issued: January 2017
New:	Amendment: √

Education and Training

Training courses are available through the Manitoba Fire College:

- Part 9: The House - Building Structure
- Part 9: The House - Health and Safety
- Part 9: Building Plumbing Inspection
- Water Supply and Waste Disposal
- Part 9: Buildings - Structural Requirements
- Part 9: Buildings - HVAC and Fire Protection
- Wood Heat Safety
- Municipal By-law Administration

Inspection and Plans Examination Services

The Office of the Fire Commissioner, under its Special Operating Agency structure is exploring the viability of selling plans examination and inspection services to clients.

OFFICE OF THE FIRE COMMISSIONER, GROWTH, ENTERPRISE AND TRADE REGIONAL OFFICES

Winnipeg: 508 - 401 York Avenue
Winnipeg MB R3C 0P8
ph: (204) 945-3322 or 1-800-282-8069 / fax: (204) 948-2089

Brandon: 1601 Van Horne Avenue
Brandon MB R7A 7K2
ph: (204) 726-6855 or 1-888-253-1488 / fax: (204) 726-6847

Municipal Act Procedures Manual

PART: OTHER MATTERS	
Subject: 4 - Municipal Ombudsman	
Page: OM.4.1	Date Issued: March 1997
New:	Amendment: √

OM.4 Municipal Ombudsman

(1) Local Resolution of Public Complaints

Every municipality has, at some point, received complaints from or been involved in a dispute with a ratepayer or resident. The types of complaints/disputes received by municipalities are wide ranging, but no doubt, are common to all municipalities. However, every complainant believes their problem to be unique, and has different expectations about how it should be resolved.

Most often, council or staff can easily resolve the complaint or dispute through discussion with the complainant. Several local dispute resolution options are available to the municipality:

- discussion between the administrative staff, council and the complainant
- establishment of a committee of council to hear and make recommendations to resolve complaints to the municipality
- involvement of an impartial third party, for example, a citizen representative
- formal mediation, through a mediation services agency

Municipalities are strongly encouraged to make every effort to resolve complaints at the local level.

(2) Services of the Ombudsman

Amendments to *The Ombudsman Act* now gives the provincial Ombudsman the authority to investigate complaints about municipal administration.

The following summarizes the Ombudsman's authority to investigate complaints about municipalities and the limitations on the Ombudsman's authority to do so.

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PART: OTHER MATTERS	
Subject: 4 - Municipal Ombudsman	
Page: OM.4.2	Date Issued: January 2017
New:	Amendment: √

The Manitoba Ombudsman may be contacted at:

750 - 500 Portage Avenue, Winnipeg, Manitoba R3C 3X1

Phone: (204) 982-9130 - Fax: (204) 942-7803

Toll Free in Manitoba - 1-800-665-0531

or

202-1011 Rosser Avenue, Brandon, Manitoba, R7A 0L5

Phone: (204) 571-5151 - Fax: (204) 571-5157

Toll Free in Manitoba - 1-888-543-8230

(3) What is an Ombudsman?

The Ombudsman is:

- an independent watchdog of the administration of the Government of Manitoba and municipalities
- an Officer of the Legislature, reporting to the Legislature
- independent, impartial and at arms length from both provincial and municipal governments

(4) Powers of the Ombudsman

Jurisdiction

The Ombudsman's mandate is to conduct an impartial and objective investigation of complaints about the *administration* of the laws and policies of the municipality if someone feels unfairly treated.

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PART: OTHER MATTERS	
Subject: 4 - Municipal Ombudsman	
Page: OM.4.3	Date Issued: March 1997
New:	Amendment: √

In an investigation, the Ombudsman may:

- require the municipality or any person to provide any information relating to the matter under investigation, and to produce that information if requested by the Ombudsman.
- summon and examine on oath any person who can give information.

Limitations on Jurisdiction

The Ombudsman has no authority to investigate:

- a *policy* decision of council
- any proceeding before, or any order, decision, or omission of a court, judge, referee, magistrate or justice of the peace
- any award, decision, recommendation or omission of an arbitrator or board of arbitrators to which *The Arbitration Act* applies
- any decision, recommendation, act or omission where there is under any Act a right of appeal or objection (eg. things that may be appealed to The Municipal Board, Board of Revision, court), unless the Ombudsman is satisfied it is unreasonable to expect the person to exercise their right of appeal

(5) Who can Complain to the Ombudsman?

Any person who feels aggrieved by an administrative action of the municipality or an employee of the municipality may complain to the Ombudsman.

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(6) How Does the Ombudsman Help?

The Public

The Ombudsman helps people:

- clarify their concerns and identify the specific nature of the problem
- if the complaint is outside the Ombudsman's jurisdiction, by making a referral to the appropriate agency to deal with the complaint
- if the complaint is within the Ombudsman's jurisdiction, by investigating the matter
- by having the authority to recommend corrective action

Council

The Ombudsman helps council resolve complaints in instances where:

- council may not necessarily have the time, resources or powers to investigate the complaint
- council may not be seen to be independent, particularly if the complainant does not get a satisfactory response to his or her complaint
- council cannot defend the complaint due to confidentiality reasons, or because an appearance of bias or conflict exists

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Municipal Staff

The Ombudsman assists municipal staff in instances where:

- no explanation by the municipality is satisfactory to the complainant
- staff cannot defend their decision or action due to confidentiality reasons
- the municipality cannot internally resolve the complaint

If, following an investigation, it is found that staff has acted fairly and reasonably, the Ombudsman will report that finding to the complainant.

(7) How Complaints are Handled by the Ombudsman

1. A complaint is made in person, in writing, or by telephone:
 - if by telephone, and it is determined that an investigation will be conducted, the complainant may be asked to provide the particulars of the complaint in writing
 - an Intake Officer will assist individuals who find it difficult, or who are unable to put their complaint in writing
2. Before investigating, the Ombudsman encourages and may require the complainant to pursue existing remedies.
3. The complaint is assigned to an Investigator, who gathers information or evidence through telephone inquiries, requests for written information, personal interviews, and/or a review of the municipality's file records or any other documentation relevant to the investigation.
4. If the complaint is justified, the Ombudsman may make a report containing any recommendations the Ombudsman deems appropriate to resolve or redress the complaint to the head of council. The head of council is required, at the next meeting of council, to close the meeting to the public so that council may discuss the report in private. The Ombudsman cannot force the municipality to take the recommended corrective action.

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5. After completing the investigation, the results are reported to the complainant and to the municipality. The report may be verbal or in writing, depending on the nature and scope of the investigation.

(8) Offences

A person who unlawfully restricts or obstructs the Ombudsman, or who fails to comply with a lawful requirement of the Ombudsman or who makes false statements or misleads the Ombudsman, is guilty of an offence and liable on summary conviction to a fine or to imprisonment, or both.

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Date Issued: June 2014

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OM.5 Donations to Municipalities

(1) Legal Requirements

Municipalities are responsible for ensuring that gifts they receive and the receipts they issue are in compliance with *The Income Tax Act* and Canada Revenue Agency (CRA) requirements. Since these requirements may change over time, municipalities are encouraged to confirm the requirements with the CRA prior to accepting a gift or issuing a receipt.

Sub-paragraph 149.1 (1) of *The Income Tax Act* (Canada) provides that a Canadian municipality is a ‘certified Donee.’ This means that a municipality can accept a gift for which an income tax receipt can be issued. Gifts can be used at the municipality’s discretion in accordance with its governing laws.

The Income Tax Act does not define the term gift, so the common law meaning is used. As established at law, a gift is:

- a voluntary transfer of property without consideration;
- given by a donor who freely disposes of the property and there must be a recipient who receives the property given; and
- given without conferring a right, privilege, material benefit or advantage on the donor or on a person designated by the donor as a consequence of the gift.

(2) Donations to Municipalities

Municipalities have been requested, from time to time, to accept donations on behalf of private clubs, issue municipal receipts for those donations, and turn the proceeds over to the clubs for their use. The donors may then want to use the receipts as charitable donation deductions for income tax purposes.

Donations to a Canadian municipality can be subject to a general direction, that is, for use in a particular program or project. However, decisions regarding the use of the donations are the exclusive responsibility of the municipality.

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Further, the program or project must operate under the authority of the municipality (e.g. a committee established by municipal by-law or funded by the municipality, be of interest to a substantial portion of the municipality's population and serve all residents of the municipality).

(3) Canada Revenue Agency Information

Where circumstances meet the parameters of the CRA, as described above, municipal receipts issued for donations should be marked as deductible donations and contain the following information:

- a statement that it is an official receipt for income tax purposes;
- the name and address of the municipality;
- the receipt's unique serial number;
- the place where the receipt was issued;
- the day and year the donation was received
- the day on which the receipt was issued if it differs from the day of donation;
- the full name, including middle initial, and address of the donor;
- the eligible amount of the gift;
- the signature of an individual authorized by the qualified donee to acknowledge donations; and
- the name and web site address of the Canada Revenue Agency:
www.cra.gc.ca/charitiesandgiving

Municipalities must keep adequate records to maintain their qualified donee status. These records must contain:

- Information to allow the CRA to verify revenues for which donors can claim tax credits or deductions;
- Information to allow the CRA to confirm that they meet the requirements for qualified done status under the *Income Tax Act*; and
- A duplicate of each receipt containing prescribed information for each donation received.

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If a chief administrative officer is in doubt about any specific fund raising initiative, an inquiry should be directed to:

**Charities Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5
1-800-267-2384**

In any case, the municipality is not in a position to guarantee that receipts issued by the municipality are deductible for income tax purposes, and so if it does enter into an agreement to channel donations in this manner, the municipality should advise the donors that it is not able to guarantee income tax deductibility.

More information on operating a registered charity and on the issuing of official donation receipts is available on the Canada Revenue Agency website:

Policies and Guidance about Operating a Registered Charity:

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/prtng-eng.html>

Issuing Receipts:

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html>

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PART: OTHER MATTERS

Subject: 6 - Sustainable Development

Page: OM.6.1

Date Issued: April 2005

New:

Amendment:

OM.6 Sustainable Development

(1) Sustainability Guidelines for Local Governments

In accordance with Section 15 of the *Sustainable Development Act* the Province of Manitoba has adopted *The Sustainability Guidelines for Local Governments, School Divisions, Universities, Colleges and Regional Health Authorities Regulation*. This Regulation establishes guidelines for evaluating the sustainability of programs and activities and guidelines for sustainable procurement for municipalities, school divisions, colleges and Regional Health Authorities.

Sustainable development means meeting the needs of the present without compromising the ability of future generations to meet their own needs. While sustainable development is an evolution in the way decisions are made, it does not mean major changes in the way your municipality does things. Using these guidelines is a first step to maximizing the sustainability of municipal operations.

(2) Evaluating Programs and Activities

The Regulation contains guidelines for evaluating the sustainability of programs and activities. Sustainable program management means taking into account the economic, environmental, human health, and social impacts of municipal programs and activities to minimize negative impacts and maximize sustainability.

In practical terms, this means considering all aspects of programs (economic, environmental, land use, human health and social and heritage costs), through all phases of their delivery, and monitoring activities to ensure they are being performed in a way that minimizes negative impacts.

(3) Guidelines for Sustainable Procurement

The Regulation also contains guidelines for sustainable procurement. Sustainable procurement means selecting products and services that minimize negative impacts on the economy, environment, human health and social well-being.

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Integrating principles of sustainable development into procurement decisions requires thinking about the costs and impacts associated with the entire life-cycle of products or services being purchased: creation/manufacturing, distribution/shipping (including packaging), use, maintenance and disposal (including potential for reuse/recycling). In practical terms, life cycle analysis means considering the effects and costs of a product throughout its acquisition/use/disposal cycle, rather than just its up front purchase price. Many suppliers perform this research for their clients and offer a list of environmentally preferable products.

Procurement that supports the principle of sustainable development does not have to cost more - it is about selecting products that perform well, minimize negative impacts and are available at acceptable prices.

(4) Additional Information

Sustainable Development in Manitoba:

Additional information about sustainable development and its application in Manitoba is available by calling:

Manitoba Sustainable Development at (204) 945-6784 or from the Manitoba Sustainable Development website at: <http://www.gov.mb.ca/sd/>

Green Procurement:

Information about Green Procurement by the Province of Manitoba is available from:

Procurement Services Branch website at: <http://www.gov.mb.ca/mit/psb/green.html>