



Council Guideline Identifying Gaps in Council Policies

BACKGROUND:

In response to an investigative report from the Integrity Commissioner, Council directed the following:

THAT the appropriate staff work with the Integrity Commissioner to develop a best practice to guide Members of Council in respect to the intersection between the Procedural By-law and the Council Code of Conduct and what process to be followed where a Members identifies a gap in the policies (May 12, 2020)

PURPOSE

To provide a guideline of options for Council to identify gaps in Council policies and provide a compressed document with previously developed guidelines and resources for Council on how to bring matters forward to Council including identifying gaps in policies.

APPLICATION

This guideline document applies to Council for the Town of Gravenhurst.

GENERAL

Council is responsible for establishing policy while Administration is responsible for providing technical and legal advice for decision-making purposes and carrying out the actions required within the policy framework. In so doing, it is critical that each maintain the separation – only Council gets to vote and decide policy and only Administration does the work. Individual Councillors do not have the authority to take action on behalf of the municipally.

Council are reminded that the Chief Administrative Officer (CAO) is technically their one appointed employee. Through the CAO By-law, the delegated authority for directing of the other departments is through the CAO, or delegate.

As defined within the *Municipal Act*, is the role of Council to represent the public and to consider the well-being and interests of the municipality, develop and evaluate policies and programs of the municipality, determine which services the municipality provides, ensure that administrative policies, practices and procedures are in place to implement the decisions of Council, ensure accountability and transparency of the operations of the municipality, and to maintain financial integrity of the municipality. There are a variety of legislative and Gravenhurst Council specific policies that support Council and Administration in their roles and responsibilities for decision making including the

Procedural By-law, the Council Code of Conduct, the Council Staff Relations Policy and the CAO By-law.

EXISTING DOCUMENTATION

The following are current processes in place which allow members of Council the opportunity to provide comments regarding policies and permit discussions and decisions of policy to be made with all of Council.

A. Municipal Act - Spheres of Jurisdiction

The Town of Gravenhurst operates within a two-tier structure – Gravenhurst (lower-tier), District of Muskoka (upper-tier). The Municipal Act gives the broad authority to provide services and direct for the development of policies as deemed desirable to the public:

‘A lower-tier municipality and an upper-tier municipality may provide any service or things that the municipality considers necessary or desirable for the public (Section 11.A)’

Council is provided with the authority to pass by-laws respecting the following matters:

- Governance structure of the municipality and its local boards
- Accountability and transparency of the municipality and its operations and of its local boards and their operations
- Financial management of the municipality and its local boards
- Public assets of the municipality acquired for the purpose of exercising its authority
- Health, safety and well-being of persons
- Protection of persons and property

Council may also pass by-laws respecting matters within the following spheres of jurisdiction unless the upper-tier has assumed responsibility (*) or there may be a shared responsibility where it has been agreed up on by both levels:

- Highways (including parking and traffic on roads within its geographical jurisdiction)
- Transportation systems
- Waste management *
- Public utilities (water, sewer) *
- Culture, parks, recreation and heritage
- Drainage and flood control (except storm sewers)
- Structures (fences, signs)
- Animals
- Economic development services
- Business licensing

B. Through the Procedural By-law, During a Council Meeting

The above section identified the type of services Gravenhurst Council has authority over. However, if Council believes there is a gap in a service or a policy, the way to bring these matters to Council for debate is through a legal Council meeting, as included within the Procedural By-law.

Section 238 (2) of the *Municipal Act* identifies the requirement for municipalities to have in place a Procedural By-law for governing the calling, location, and procedures of meetings.

If a Member would like Council to engage in a discussion regarding the need for a new policy, discuss an existing policy, or identify gaps in an existing policy, the following sections of the Procedural By-law provide a transparent and accountable process to do so:

1. Section 5.9 Updates from Council

Each member may be provided with up to five (5) minutes total to provide updates on items within the jurisdiction of the municipality or the District of Muskoka. Debate, discussion and the introduction of motions related to the update(s) are permitted.

Members must provide written notice of the subject to be discussed to the Clerk by noon on the Wednesday prior to the meeting. The subject shall be published on the agenda. Subjects not provided in advance of the agenda being published may be added through a majority vote of Council during the adoption of the agenda.

2. Section 5.10 Updated from the Mayor

The Mayor shall be provided with up to five (5) minutes to provide update(s) on items and topics related to the Office of the Mayor.

3. Section 8.4 Notice of Motion

A member wishing to bring forward a motion for consideration for Committee of the Whole or Council shall provide written notice to the Clerk by noon on the Wednesday prior to the meeting at which a motion is to be introduced. The motion shall be published in full on the agenda for that meeting and each succeeding meeting until the motion is considered or otherwise disposed of.

If a member's notice of motion has been called from the Mayor in two successive meetings and not proceeded with, it shall be dropped from the agenda and deemed to have been withdrawn unless Council otherwise decides.

C. Internal Communications with Council and Administration

Communications naturally occur outside of Council meetings and most commonly through email. These types of informal questions with the CAO and Senior Leadership Team (SLT) are appropriate. Examples such as 'Is this road owned by the Town?', 'When is the public meeting for the Smith application?', etc.

However, Town business and decision making of Council cannot occur over email. Substantive questions and discussions on matters that will or have been agenda items, should not be the subject of email communications. Examples could include statements and questions such as 'I do not support

this development application, so what should we do about it?' etc. These types of questions put Council and others into substantive business discussions that are not appropriate to be debated over email. Advancing business through emails with a quorum of Council would be considered an illegal meeting and is prohibited.

As a support tool, a general guideline of communications between Council and the CAO and SLT was developed. This guideline provides information for when the email communications relating to applicable items may include the CAO, SLT and all members of Council.

The following are the guidelines for when a member of SLT will include all of Council or all of SLT in their **email correspondence** with members of Council:

A. Including all of SLT

- SLT will circulate all of SLT on an email (original or response) to an individual Councillor when the inquiry is believed to be of a broad corporate policy or political in nature
- SLT will not include all of SLT on an email (original or response) to an individual Councillor when the inquiry is believed to be site or matter specific
- The CAO will be copied on all responses
- SLT will be using best judgement for the interpretation and application of this guideline

B. Including all of Council

- SLT will circulate all of Council on an email (original or response) to an individual Councillor when the inquiry is believed to be of a broad corporate policy or political in nature
- SLT will not include all of Council on an email (original or response) to an individual Councillor when the inquiry is believed to be site or matter specific
- The CAO will be copied on all responses
- SLT will be using best judgement for the interpretation and application of this guideline

Other methods SLT may communicate with Council may include **telephone** or **in-person** contact. It is understood that telephone calls and in-person discussions are a less formal method of communication and may or may not require circulation. If the matter is to be escalated, the communication needs to be converted into a **written record**. The best method for this process is to **transfer the discussion into an email** and follow the same protocols as listed above.

FOLLOW UP

For further questions regarding the Procedural By-law or this support document, Council are invited to contact the CAO or Town Clerk.

DATE: July 31, 2020
TO: Kayla Thibeault, Town Clerk
FROM: Suzanne Craig, Integrity Commissioner
RE: **Integrity Commissioner Comments on Council Guideline Identifying Gaps in Council Policies**

1. Background:

I have been provided with a copy of the above-noted draft policy. Below I provide my comments as Integrity Commissioner for the Town of Gravenhurst in respect the Council Guideline document which has been drafted to set out processes to be followed when identifying gaps in Council policies.

2. Relevant Sections of the Code and Legislation:

Under the Code of Conduct for Members of Council and Local Boards (the “Code”), Members of Council may request the Integrity Commissioner assist in providing advice on their proposed actions to determine if the matter triggers any provision of the Code.

Section 7 of the Code contains the rules in respect of Confidential Information. Section 7.1 states that “[m]embers receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the Town that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) and other applicable privacy laws and information received during closed meetings of Council.”

Subsection 239(1) of the *Municipal Act* provides that Council meetings shall be open to the public. Subsections 239 (2), (3) and (3.1) of the Act set out the exceptions under which municipalities may and shall close meetings to the public.

The Town is subject to both the privacy provisions of the MFIPPA and the closed meetings rules of the *Municipal Act*. Through the operation of the provisions of the Code, individual Members are required to adhere to the rules of MFIPPA and other privacy requirements.

Section 4 of the Code sets out that:

4.1 Council as a whole approves the budget, policies and governance of the Town through its by-laws and resolutions. An individual Member does not direct nor oversee the functions of the staff of the Town.

4.2 The Town's staff serve Council and work for the Town as a body corporate under the direction of the CAO. Inquiries of staff from Members should be directed to the CAO or to the appropriate senior staff as directed by the CAO.

4.3 A Member shall not publicly criticize staff. Should a Member have any issue with respect to any staff member, such issue shall be referred to the CAO.

4.4 A Member shall respect the role of staff in the administration of the business and governmental affairs of the Town, and acknowledge and appreciate that staff:

a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise;

b) work within the administration of justice and that a Member must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of justice and, therefore, a Member shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties, including any duty to disclose improper activity[...]

Intersection of Town Policies with Code Rules:

The subject of a Member's conversation with a resident is often in respect of the application of a Town policy. Often the resident will identify gaps in Town policy or raise concerns with how an approved policy is applied. This conversation would likely be appropriately defined as a constituent complaint and the identity of the complainant would not be disclosed. However, the question arises, how would the subject matter be brought forward to the Town and Council for discussion.

It is notable that section 32 of MFIPPA sets out the circumstances in which consent of an individual is not required when an officer of the municipality is disclosing personal information. Section 32 of MFIPPA states that the consent of the individual to whom personal information belongs is not required, if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution's functions.

Where a Member has received a complaint from a Town resident, there is sometimes uncertainty about what processes are in place at the Town to bring forward the matter. The decision about whether regular complaints should be brought forward at Committee/Council meetings or through the regular complaint processes by members of the public versus anonymous complaints that may be more properly addressed through a type of whistleblower process, falls within

governance and policy decision-making authority of the administration. If individual staff or residents believe that there is a risk that they will be subject of reprisals for bringing forward complaints, the default remedy should not be to raise the issue with individual Members. Section 4 of the Code sets out the rules regarding the Role of Staff. This section contains several provisions about how Council should interact with staff, including that:

The Town's staff serve Council and work for the Town as a body corporate under the direction of the CAO. Inquiries of staff from Members should be directed to the CAO or to the appropriate senior staff as directed by the CAO.

The question to be answered is whether there are escalation processes in place at the Town to bring forward complaints about Town staff and gaps in policies. Based on my review of the Council Guideline Identifying Gaps in Council Policies, if a Member of Council would like to discuss the need for a new policy during a Council meeting, it appears that under S.5.9 of the Procedural Bylaw, certain updates, such as relating to HR matters etc., would likely be ruled out of order, unless the motion to be discussed will be in closed. Also, not every subject area can be subject of a motion and the Town Clerk is the subject-matter expert in a position to advise Members what subjects may be appropriately brought forward for discussion in respect of a policy gap.

Conclusion:

The good governance and fair application of rules of a municipality should not depend on the goodwill of an individual Members of Council or staff. While reasonableness is an imperative to cordial and respectful Staff Council relations, there is a Staff Council Protocol that sets out the roles, responsibilities and obligations of both staff and Members of Council in their interactions, including when seeking out a remedy for real or perceived policy gaps. Further, there is nothing in the Council Code of Conduct that prevents a Member of Council from casually speaking with any member of the public or staff. However, Members of Council are cautioned that discussion about Town business is appropriately reserved for Committee or Council meetings. As a rule, the discussion about concerns raised by residents in respect of Town policy should be forwarded to the relevant staff subject-matter expert for action, as appropriate or to the CAO. Where a Member of Council identifies a gap in existing policy and would like to have the matter discussed by Council, they should follow the directions set out in the Council Guideline for Identifying Gaps in Council Policies.

Sincerely,

Suzanne Craig
Integrity Commissioner