

*Municipal Affairs*

**Pecuniary Interest  
for  
Municipal Councillors**

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*Alberta* 

**Capacity Building, Municipal Services Branch**

*Pecuniary Interest for Municipal Councillors*

**Alberta Municipal Affairs**

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## Pecuniary Interest for Municipal Councillors

### Pecuniary Interest

Alberta's municipal councillors have a strong record of public service to their communities. As a public servant, you are responsible for upholding the public interest ahead of any private interests you may have.

The *Municipal Government Act (MGA)* describes pecuniary interest and sets out the procedures you must follow if a matter in which you have a pecuniary interest comes up at a council meeting or a committee of council meeting. These rules are designed to protect the public interest while ensuring that your ability to work is not adversely affected by your election to council.

In order that the public interest is served and seen to be served, it is important that you be open and honest about dealing with the municipality. Be fair to yourself, your electors, and your municipality by keeping your private interests in harmony with the public interest.

**This document is only a guide to the legislation. It is recommended that you consult your solicitor for advice on specific situations.**

### Definition

Section 170 of the *MGA* describes pecuniary interest as something which could monetarily affect you, your spouse, or adult interdependent partner, or children, your parents or the parents of your spouse (in other words, your immediate family), or a business which employs you or in which you have an interest.

Specifically, pecuniary interest means an interest in a matter which could monetarily affect:

- you
- a corporation, other than a distributing corporation, in which you are a shareholder, director or officer
- a distributing corporation in which you
  - beneficially own voting shares carrying at least 10% of the voting rights attached to the voting shares of the corporation or of which you are a director or officer
- a partnership or firm of which you are a member.

This section also says that *"a councillor has a pecuniary interest in a matter if (a) the matter could monetarily affect the councillor or an employer of the councillor, or (b) the councillor knows or should know that the matter could monetarily affect the councillor's family."* You must decide when you have a pecuniary interest. Council cannot make the decision for you.

Section 172 of the *MGA* sets out the procedure you must follow if a matter in which you have a pecuniary interest comes before any meeting in which you are taking part in your

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capacity as a member of council. Failure to follow these procedures could lead to your disqualification from council.

### Exceptions

Several exceptions are listed in section 170(3) of the *MGA* so that an overly-restrictive interpretation of the provisions will not disrupt the affairs of the municipality or your function as a councillor.

A councillor does not have a pecuniary interest only because:

- the councillor, an employer of the councillor or a member of the councillor's family may have as an elector, taxpayer or utility customer of the municipality,
- the councillor or a member of the councillor's family may have by reason of being appointed by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the municipality or by reason of being appointed as the representative of the council on another body,
- the councillor or member of the councillor's family may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor or member of the councillor's family may be entitled by being appointed by the council to a position described above,
- the councillor may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor may be entitled by being a councillor,
- the councillor or a member of the councillor's family may have by being employed by the Government of Canada, the Government of Alberta or a federal or provincial Crown corporation or agency, except with respect to a matter directly affecting the department, corporation or agency of which the councillor or family member is an employee,
- a member of the councillor's family may have by having an employer, other than the municipality, that is monetarily affected by a decision of the municipality,
- the councillor or a member of the councillor's family may have by being a member or director of a non-profit organization as defined in section 241(f) or a service club,
- the councillor or member of the councillor's family may have
  - by being appointed as the volunteer chief or other volunteer officer of a fire or ambulance service or emergency measures organization or other volunteer organization or service, or
  - by reason of remuneration received as a volunteer member of any of those voluntary organizations or services,
- the councillor, an employer of the councillor or a member of the councillor's family that is held in common with the majority of electors of the municipality or, if the matter affects only part of the municipality, with the majority of electors in that part,
- the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor, or
- they discuss or vote on a bylaw that applies to businesses or business activities when

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the councillor, an employer of the councillor or a member of the councillor's family has an interest in a business, unless the only business affected by the bylaw is the business of the councillor, employer of the councillor or the councillor's family."

### **What to Do**

Section 172 of the *MGA* says that you may not take part in the discussion and decision-making on any matter in which you have a pecuniary interest. The legislation attempts to ensure that you are not discriminated either for or against by virtue of your membership on council.

If you have a pecuniary interest:

- you are to disclose that you have an interest and its general nature
- you are to abstain from any discussion of the matter and from voting
- you are to leave the room until the matter has been dealt with, and you should make sure that your abstention is recorded in the minutes.

For example, you might say *"Mr. Mayor, I am abstaining on this matter because I am a shareholder in the company. I am leaving the room and I ask that my abstention be recorded."*

If the matter is one in which you, as an elector or property owner, have a right to be heard by council (for example, a land use bylaw amendment, lane or street closure, etc.), you are to disclose your interest and abstain, but you may remain in the room to be heard by council in the same manner as any person who is not a member of council. In this case, you should follow the procedure required of any other person to be placed on the list of delegations to be heard by council. When the matter comes up for hearing, you might say *"Madam Mayor, I am abstaining from this matter because I own the property affected. I ask that my abstention be recorded."*

You should then leave the council table and go to the area where the public sits. The mayor should call you to make your presentation in the same manner as any other person. You should state your case, answer any questions that may be asked of you and then be seated in the public area for the remainder of the public hearing.

When council debates the matter it would be advisable to leave the room during the decision-making process.

### **Temporary Absence**

On occasion, you may be temporarily absent from a meeting when a matter in which you have an interest comes up for discussion. If so, upon returning to the meeting, or as soon as you discover that the matter was discussed, you are to disclose the general nature of your interest.

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The *MGA* requires the secretary to note your disclosure in the minutes.

The purpose of this provision is to ensure that a member of council does not avoid disclosing an interest by simply leaving the meeting before the matter is discussed and returning after the discussion is complete. If some matter is discussed by council while you are temporarily absent from a meeting, upon your return and as soon as you become aware of the matter, you should get the attention of the chair and say something like *“Mr. Mayor, during my absence a matter was discussed in which I have an interest. I am disclosing that my husband is an employee of the company and I ask that my disclosure be recorded in the minutes.”*

### **All Meetings**

The disclosure and abstention rules apply to every meeting of council and any of its committees. They also apply to you at a meeting of any board, committee or agency to which you are appointed as a representative of council (section 172(6) of the *MGA*). In other words, any time that you are acting as a councillor, the disclosure and abstention rules apply to you.

It is important to remember to ask the secretary at any of these meetings to record your abstention and to check that it is actually included in the minutes.

### **Doing Business**

Although there is no prohibition on doing business with the municipality when you are a member of council, every contract or agreement with the municipality in which you have an interest must be approved by council (section 173 of the *MGA*). So, if your council has delegated purchasing authority to administration, it is important that those officials know of any business interests that you have and that you make sure council approves of any contract with your business. You cannot raise the matter in council, but, if you submit a bid or offer, you can note the matter must receive council approval. If it doesn't, you will be disqualified and the contract has no force or effect.

The following are the only exceptions:

- if the contract or agreement is for the performance of work or the provision of a service in the case of an emergency, or
- if the contract or agreement is for the sale of goods or services to the municipality or to persons contracting with the municipality at competitive prices by a dealer in those goods or services, that is incidental to, or in the ordinary course of business
- the agreement was entered into before your term of councillor started

### **Statement of Disclosure of Interests**

If you have extensive business interests, it may be difficult for you to know when these businesses are dealing with your municipality. It may be even more difficult for purchasing

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agents to identify a contract which requires the approval of council because a member of council has an interest.

In such cases, it may help everyone involved – yourself included - if a listing of interests is available in the office. Council may, by bylaw, require its members to file a statement with a designated officer showing the names of their immediate families and any business in which they have an interest (section 171 of the *MGA*). The designated officer then compiles a list of all the names reported on the statements and provides it to the employees of the municipality indicated in the bylaw.

This provision is permissive. This means the council has the power to pass such a bylaw, however, is not required to do so.

### Remember

If you vote on a matter in which you have pecuniary interest, you are subject to disqualification, even if you vote against your interest.

Ask to have your abstention recorded in the minutes of the meeting.

The rules apply at all meetings of your council and its committees, and at the meetings of any board, commission, committee or agency to which you are appointed as a representative of the council.

If your council passes a bylaw requiring a statement of disclosure of interests, keep your statement up-to-date by regularly informing the designated officer of additions or deletions:

If you are in doubt as to whether you have a pecuniary interest, obtain a written legal opinion from your own solicitor.

**This guide is an information summary only and has no legislative sanction. For certainty, refer to the *Municipal Government Act* and the *Local Authorities Election Act*. Copies can be purchased from Alberta Queen's Printer Bookstore:**

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# Frequently asked questions: *Local Authorities Election Act* 2018 & 2020 Amendments

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## Why is the *Local Authorities Election Act* Changing?

- Municipalities, school boards and the public routinely bring forward suggestions for amendments to the *Local Authorities Election Act (LAEA)*.
- As a general practice, Municipal Affairs reviews the legislation following each municipal general election (most recently after the 2017 local elections).
- In 2018, Municipal Affairs conducted broad consultation with Albertans and key partners on a full suite of policy considerations. Amendments to the legislation occurred during the 2018 fall legislative session.
- \*Following the 2018 amendments, Municipal Affairs heard from community partners and the public expressing concern that amendments over-regulated election financing and inadvertently provided a fundraising advantage to incumbents.
- \*Municipal Affairs conducted a further review and analysis of the *LAEA* and amendments occurred during the 2020 spring legislative session.

## What are the changes to Campaign Finance and Contribution Disclosure

- Campaign finance and contribution disclosure requirements will now also apply to School Board Elections.
- Corporations, trade unions and employee organizations are not allowed to contribute to candidates.
- \*Contributions:
  - An individual Albertan may contribute up to \$5,000 per candidate for both municipal and school board trustee candidates during the campaign period.
  - A candidate may contribute up to \$10,000 to their own campaign during the campaign period.
  - A person may accept up to \$5,000 in the aggregate, per year, outside of the campaign period.
  - A person may contribute up to \$10,000 per year, outside of the campaign period.
- The donation portion of fundraising contributions are now subject to contribution limits and disclosure requirements.
- Candidates must be nominated before incurring any campaign expenses or accepting contributions.

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\*Amendments passed in July 2020 under Bill 29: *The Local Authorities Election Amendment Act*

- Campaign period is shortened from 4 years to one year (January 1 through December 31 of a general election year).
- \*Nomination period will now align with beginning of the campaign period (nine months, January 1 of general election year until nomination day, occurring four weeks before election).
- \*Candidates will not be permitted to carry over campaign surpluses.
  - Surpluses greater than \$1,000 must have an amount donated to charity that will result in the surplus being less than \$1,000.
  - Surpluses less than \$1,000 may be retained or be donated to a registered charity.
- \*If a candidate's disclosure statement shows a deficit, the deficit must be eliminated within 60 days after filing the disclosure statement.
- The definition of "expense" aligns with the provincial legislation, and expense reporting will be more detailed (broken down by category).
- Candidates must open a dedicated campaign bank account when contributions reach \$1,000 (previously \$5,000), and must include monies contributed by the candidate for their campaign.
- Candidates must disclose names and addresses of all donations exceeding \$50 (previously was \$100).
- Financial disclosure statements are now required for all self-funded campaigns. (Previous rule had been for self-funded campaigns over \$10,000.)
- \*Candidates who spend \$50,000 or more are required to file a review engagement, as defined under the *Chartered Professional Accountants Act*, with their campaign disclosure statements.

Are there any changes to voter accessibility requirements?

Yes, the following things have changed in the new LAEA:

- List of acceptable identification may be expanded.
  - The Minister of Municipal Affairs may create a list of acceptable identification, in addition to government issued identification and identification provided by the List of Acceptable Identification produced by the Chief Electoral Officer of Alberta.
- Vouching provisions will be expanded to allow for an elector who has shown valid identification and signs the appropriate declarations to vouch for an elector who does not have identification.
  - \*An elector may only vouch for one person, unless multiple individuals share the same residence, in which case the elector may vouch for all persons residing in the same residence.
- The six-month Alberta residency requirement to be an eligible elector has been removed to align with provincial rules.
- Municipalities with populations of over 5,000 must provide advance voting.
- Municipalities with populations of less than 5,000, as well as all school boards, may on a voluntary basis provide for an advance vote.

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\*Amendments passed in July 2020 under Bill 29: *The Local Authorities Election Amendment Act*

Will elected officials and candidates be held more accountable and be more transparent?

Yes, the *LAEA* contains multiple restrictions regarding advertising and campaigning in and near voting stations, and provides more authority to Returning Officers to enforce these restrictions.

- Campaign activities and advertising on property surrounding voting stations will be prohibited.
- Returning Officers can enforce the restriction on campaign activities or advertising at voting stations by causing campaign advertising to be removed, and instruct those obstructing the voting process or taking part in campaign activities to leave the property.
- Third-party advertising is restricted in municipal and school board elections, including registration requirements and limits on expenses.
- The names of nominated candidates will be released by municipalities 48 hours following the close of nominations.

Are there any other changes that have occurred to the *LAEA*?

Numerous clarifying and technical amendments were approved, including:

- \*Definition has been added for “nomination period” to reflect the nomination period from January 1 in the year of an election to four weeks prior to election day.
- A substitute returning officer must be appointed at the time a returning officer is appointed for general elections, by-elections, and votes on questions/bylaws.
- \*The local jurisdiction may pass bylaws to allow for a returning officer to establish one or more locations, outside of the local jurisdiction office, to accept nomination papers.
- The returning officer can reject a nomination paper that does not have the correct number of signatures, has not been sworn/affirmed and/or is not accompanied by a deposit (if required).
- \*Clarified the ability for withdrawal of nomination papers given the nomination period beginning on January 1<sup>st</sup> in the year of an election.
- Clarification that the role of ‘official agent’ is not mandatory.
- The Minister will no longer be required to be notified of the use of special ballots, or be required to appoint special ballot advisors.
- Age-related limitations for institutional votes in care facilities have been removed.
- Municipalities may choose to align their election notifications with a bylaw passed under Section 606.1 of the *Municipal Governance Act* that allows for electronic or other methods of advertising.
- The term “incapacitated elector” was amended to “persons with disabilities” or similar wording depending on the context.
- Clarification that if a recount has been requested in a municipality/school board that is divided into wards/divisions, the recount only has to occur in that

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\*Amendments passed in July 2020 under Bill 29: *The Local Authorities Election Amendment Act*

ward/division where the recount has been requested, and not the entire municipality/school division.

- Notification of a by-election for advance vote and election day is only required to be given to the electors in the affected ward/division.
- \*Clarified when election materials must be destroyed.

How will the  
Government  
enforce rules  
established in the  
*LAEA*?

The mandate of the Alberta Election Commissioner has been expanded to include certain elements of local authority elections, specifically pertaining to campaign finance and third-party advertising. This means the Election Commissioner can assess:

- Letters of reprimand
- Administrative penalties
- Compliance agreements
- Prosecution
- Candidates, contributors, third party advertisers, local jurisdictions (CAOs and ROs).

All other aspects of the *LAEA* continue to be enforced through the courts.

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\*Amendments passed in July 2020 under Bill 29: *The Local Authorities Election Amendment Act*