

Sent via email to: minister.mah@ontario.ca

February 3, 2021

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
College Park, 17th Floor,
777 Bay St.
Toronto, Ontario
M7A 2J3

Dear Minister Clark,

Re: Options for Enforcing Compliance by Council Members with Municipal Codes of Conduct

I am writing to you in response to your inquiry at the December MOU meeting as to whether AMO might provide input into a potential council member recall mechanism. I appreciate being able to provide you with some input on behalf of the Association. To do so, I am taking the unusual step of attaching the motion approved recently by AMO's Board, expanded upon in the text of this letter to explain the rationale for our recommendations and the detailed legislative, regulatory, and municipal policy changes needed to put them in place.

As I know you are aware, the subject of enforcing Codes of Conduct for democratically elected members of a council or legislature is an important issue. It is also one in which striking the correct balance is both difficult and critical to preserving accountability and confidence in the electoral system. Since your inquiry, AMO has been working to examine options that improve accountability to the electorate with reasonable actions that can help to promote and ensure good behaviour amongst elected officials. Our staff have consulted with municipal legal experts and conferred with staff at your Ministry. Our Executive Committee and Board of Directors have also discussed the issue and potential recommendations. The input I am presenting you for consideration reflects development and refinement at each of those stages.

I can tell you that our Board had detailed discussions and informed opinions were voiced on all sides of this issue. With that said, our Board reached a general consensus that municipal Codes of Conduct and the system to enforce them are strong governance tools but that municipal governments needed a better ability to ensure compliance with these Codes that all elected officials agree to when they take office.

Ultimately, the Board strongly endorsed the need to create additional interim options to enforce council member behaviour as well as the ultimate ability to remove a council member in the most egregious breaches of a municipal Code of Conduct.

These options build on the current removal criteria for council members of criminal conviction or missing three consecutive council meetings.

Guiding Principles

The AMO Board endorsed several principles to guide our conversations and analysis. We think they are relevant to any actions the Ministry may consider regarding changes to compliance mechanisms for council members. As a result, I am presenting them to you in this letter so that you can understand how our recommendations were formed and for your consideration as you work on any policy development in this area. AMO will weigh any policy changes in accordance with the principles. The most significant ideas behind these principles are respect for municipal government as a democratic institution including municipal electors, evolution of current mechanisms, practicality and acknowledgement that enforcing criminal law is a separate task from the Code of Conduct compliance matters being considered here.

The principles AMO believes most relevant are:

- **Subsidiarity and accountability to electorate** – decisions taken at the closest level of their impact and local electors must be consulted/decisions respected.
- **Mature municipal governments** –councils should decide and implement sanctions, not other orders of government.
- **Clear link to municipal governance** – process and actions encourage compliance with governance policies and insulated from vexatious claims and political grievances/reprisals.
- **Practicality** – can the outcome be achieved affordably in a term of office.
- **Respects other legal processes** – does not replace criminal conviction which results in forfeit of a council seat.

Removal by Minister and Recall by Voters

As we applied these principles, AMO considered the two options that have been presented through recent public discussions in Ontario. They are: removal of a council member by the Minister of Municipal Affairs and Housing; and voter recall. As the Board considered these options, it became evident that they did not meet the principles of respect for municipal government institutions and voters, subsidiarity, and practicality. As a result, the Board elected not to recommend these as actions for policy development.

Code of Conduct Enforcement and Integrity Commissioners

The Board preferred to recommend an alternative to the previous options that it felt enhanced the current mechanisms in place to incent compliance with behavioural

codes and also allow recommendation of suspension or removal in some circumstances, subject to process. AMO's Board felt that the introduction of municipal Integrity Commissioners, reporting as officers of council governance, offered the best option for enhanced compliance with Codes of Conduct, with new enhancements to powers and processes through regulation and municipal policy. The rationale for this is that the Board believes that these Codes are mutually agreed upon covenants that all members of council agree to uphold upon election and that it is fair to hold members accountable to each other and the public for their compliance with them.

In particular, the Board believes that the introduction of municipal Integrity Commissioners has been largely successful but that better education and standardization of the role, where appropriate, is needed to improve performance across the province. The Board also felt that the fact these officers are employed by councils and already empowered to investigate breaches in Codes of Conduct provided a useful foundation consistent with the need to respect local governments and our electors. Subsequent powers would render them even more useful to uphold principles agreed to by public office holders.

Administrative Monetary Penalties

Despite their current relevance, some particular changes to legislation and regulations are needed to enhance the Integrity Commissioner's role to enforce Codes of Conduct to give it more tools to do so. The Board recommends that the *Municipal Act* be amended to allow Administrative Monetary Penalties to be applied to council members where violations of Codes of Conduct have been found through an Integrity Commissioner's report. To allow these penalties and create a framework for their application, regulations under the *Municipal Act* should also be filed to create a range of penalties that can be applied throughout the province.

The Board was keen to ensure that the differences in municipal governments were reflected and recommends that such a regulation should also require each municipal council to establish an Administrative Monetary Penalty Policy with respect to Code of Conduct violations that can account for such variances as council remuneration, local economic circumstances and institutional culture. These penalties should only be applied after the conclusion of a public report of an Integrity Commissioner has documented violations of Codes of Conduct and recommends the application of these consequences to council.

Suspension

While Administrative Monetary Penalties were felt to have merit, AMO's Board also discussed the need to be able to suspend and, in some cases, remove a member of council in more specified and limited situations. The Board considered that suspensions of council members for a specified and limited time could be warranted in situations where that member's participation in certain council decisions could have deleterious consequences to public health or safety, such as during an emergency.

The current response to the pandemic is one such situation that such an action may be taken where public discourse and disagreement about the existence of COVID-19 and use of public health measures have been openly discussed. Once again, the members of AMO's Board believe that such an action should only be taken where a member's participation in a meeting or meetings is immediately or imminently likely to make response to an emergency situation or other health and safety threat very challenging or impossible.

Removal from Office

In the most significant situations, the Board believes that there should be the ability to remove members of council when the most significant breaches of Codes of Conduct are found. This would need to be separate from any criminal proceedings that may otherwise arise. In such cases, it would be appropriate for a council to seek intervention by a member of the judiciary to remove a council member where a report of a municipal Integrity Commissioner recommends such action for serious, willful and/or repeated significant violations of a Code of Conduct adopted by the municipality and agreed to by council members. Removal of a councillor by a member of the bench would of course require a legal appeal mechanism and should not necessarily disqualify a person from running in a subsequent election.

Education and Standardization

Finally, the Board recommended that better education and standardization, where appropriate, of the skillset of Integrity Commissioners should be pursued over time. To do so, the Board recommended that the Ministry of Municipal Affairs and Housing develop resources for current and prospective Integrity Commissioners to improve access for councils to quality and consistent resources across Ontario. To do so, the Ministry could begin to build a continuous improvement regime for qualifications/skill sets of a Commissioner that would be common to each office holder regardless of their location.

Additionally, the Board discussed the need to educate council members through onboarding by municipal officials after an election. Municipal staff will need to update their materials for new and returning members to reflect any changes to the regime. Also, for prospective members of council AMO's educational offerings for candidates should be updated to ensure that they understand the roles of Integrity Commissioners, compliance with Codes of Conduct and other necessary knowledge before they submit their nominations. As well, we would ask that MMAH's Councillor Guide also be so updated.

Conclusion

AMO's Board had a thorough and detailed discussion based on the research conducted by our organization and the experiences of our members. The Board is aware that it is recommending significant changes to the role played by Integrity

Commissioners as well as the conventions that have bound democratically elected municipal officials in Ontario for decades or more. While it was felt that recall and removal of council members by the voter or Minister respectively did not meet the test of the principles we agreed to, we believe that more can and must be done to help ensure municipal government continues to enjoy the confidence of our electors.

The recommendations put forward in this letter and the rationales for them have the potential to do so in a measured manner. We trust you will consider our thoughts and advice in this complex matter. We are happy to discuss them as you move forward with any action to improve Code of Conduct compliance.

Sincerely,



Graydon Smith
AMO President
Mayor of the Town of Bracebridge

cc: Kate Manson-Smith, Deputy Minister, Ministry of Municipal Affairs and Housing

Options for Enforcing Compliance with Municipal Codes of Conduct Amongst Council Members

Motion:

That the Board of Directors of the Association of Municipalities of Ontario endorse the provision of advice to the Minister of Municipal Affairs and Housing to consider the following options to enforce compliance with Municipal Codes of Conduct amongst members of municipal council.

That the Board direct the President to write to the Minister with the Board's advice for strengthening enforcement of municipal Codes of Conduct for council members, as follows:

That section 223.2 (3) of the *Municipal Act* be amended to allow Administrative Monetary Penalties to be levied in the event that breaches of a municipal Code of Conduct are found through an Integrity Commissioner's investigation and published in a report;

That the Ministry of Municipal Affairs and Housing issue regulations under the *Municipal Act* authorizing municipal governments to adopt a policy for Administrative Monetary Penalties specifying a financial range of penalties for application by Integrity Commissioners in Code of Conduct breaches;

That the regulation specifies a range of financial thresholds for these penalties and a range of suspension timeframes that municipal governments can choose from to suit their local circumstances;

That an Integrity Commissioner's report into a council member's conduct be disseminated to the electors of that office through publication or other means;

That the powers of Municipal Integrity Commissioners be expanded to enforce compliance with a Municipal Code of Conduct to include:

- The levying of an Administrative Monetary Penalty for a violation of a Code of Conduct provision, subject to a municipal policy adopted by a Council specifying penalty ranges;
- Suspension of a council member for a specified time where the council member's attendance at council is affecting the ability of council to make necessary decisions in the interest of the public such as during an emergency;
- Referral to a member of the judiciary with a recommendation to consider removing a councillor from office where continued and serious violations of the Code of Conduct have been documented; and

That MMAH provide funding and resources to improve the education and performance of Integrity Commissioners to create norms and standards in the office holders to improve councillor and public acceptance and trust.