

Strong Mayor Powers and Duties

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Legislation

- Strong Mayors, Building Homes Act, 2022 (Bill 3)
 - First Reading: August 10, 2022
 - Royal Assent: September 8, 2022
 - In Force: November 23, 2022
 - Schedule 2 added a new Part VI.1 in the *Municipal Act, 2001*:
“Special Powers and Duties of the Head of Council” (ss. 284.2 – 284.17)
 - Schedule 1 added a similar new Part VI.1 to the *City of Toronto Act, 2006*
- Better Municipal Governance Act, 2022 (Bill 39)
 - First Reading: November 16, 2022
 - Royal Assent: December 8, 2022
 - In Force: December 20, 2022
 - Creates new powers re by-laws in the *Municipal Act, 2001* (new s. 284.11.1)

Regulations

- Ontario Regulation 530/22, as amended
 - Provides specific provisions and requirements re Part VI.1 of the *Municipal Act*
 - Amended by O.Reg.180/23 effective July 1, 2023, pursuant to Provincial announcement of June 16, 2023, to expand strong mayor powers, beyond Toronto and Ottawa, to the mayors of 26 large and fast-growing municipalities, including Oakville, that have committed to a housing pledge
 - Strong mayor powers and duties provisions of the Act have been in place for over six months, and apply to any municipalities designated by regulation
 - The new amended regulation effectively only expands the list of designated municipalities where those provisions apply, including Oakville, as of July 1
 - That is, the assignment of strong mayor powers and duties to the mayors of designated municipalities occurs automatically by operation of law
 - No jurisdiction for municipalities to decline or refuse to be designated by regulation under the Act
 - No discretion to the Mayor or to any municipal Council to refuse to accept or to impose local restrictions on the assigned strong mayor powers and duties under the Act arising from the designation under the regulation

Regulations (cont'd)

- Ontario Regulation 580/22
 - Identifies the following provincial priorities prescribed for the purposes of the exercise of certain powers by the Mayor:
 - Building 1.5 million new residential units by December 31, 2031
 - Constructing and maintaining infrastructure to support housing, including transit, roads, utilities and servicing
 - Apply to the Mayor's powers in three provisions of the Act:
 - Powers re Meetings (s. 284.10)
 - Powers re By-laws (s. 284.11.1) (Bill 39 powers)
 - Veto Powers (s. 284.11)

Special Powers and Duties of the Mayor under Part VI.1 of the Municipal Act

Powers to Advance Prescribed Provincial Priorities	Powers re Administrative and Political Structure of the Town	Duty to Prepare the Annual Budgets
<ul style="list-style-type: none"> Bring to Council <u>matters</u> that advance the prescribed provincial priorities Bring to Council, and require Council to consider and vote on, <u>by-laws</u> that advance the prescribed priorities and pass with only one-third vote of Members Veto by-laws that interfere with prescribed priorities (Subject to Council override by 2/3 vote) Powers cannot be delegated 	<ul style="list-style-type: none"> Appoint and dismiss CAO Appoint and dismiss heads of organizational units Determine the administrative structure Establish Council committees and assign them functions Appoint chairs and vice chairs of committees Powers can be delegated 	<ul style="list-style-type: none"> Duty to prepare the budget and present it to Council before February 1 in each year. Duty reverts to Council if the Mayor fails to present a budget by February 1 Power to veto amendments made by Council (subject to Council overturn by 2/3 vote) Duty to present in-year budget amendments only if a supplementary levy is required Duty cannot be delegated, only forfeited

Supporting Provisions
<ul style="list-style-type: none"> Mayor is required to exercise these powers in writing and give notice to the Clerk Mayor is required to give direction to staff in writing and give notice to the Clerk and CAO Mayor must declare an interest under MCIA when exercising these powers outside of a meeting context Town must maintain a public registry of declared interests In case of vacancy, powers transfer to a newly elected Mayor, but not to an appointed Mayor

Prescribed Provincial Priorities
<ul style="list-style-type: none"> Building 1.5 million new residential units by December 31, 2031. Constructing and maintaining infrastructure to support housing, including, transit, roads, utilities, and servicing.

These powers are in addition to the role of the mayor as head of council (s. 225) and the role of the mayor as chief executive officer (s. 226.1) set out in Municipal Act.

Powers to Advance Provincial Priorities

- Powers re Meetings (s. 284.10)
 - If the head of council (Mayor) is of the opinion that considering a particular matter could potentially advance a prescribed provincial priority, the Mayor may require the Council to consider the matter at a meeting
 - “meeting” means any regular, special or other meeting of Council or a committee of Council
 - Procedure By-law provisions (e.g. notice requirements, agenda deadlines) do not apply
- Powers re By-laws (s. 284.11.1) (Bill 39 Powers)
 - If the Mayor is of the opinion that a by-law could potentially advance a prescribed provincial priority, the Mayor may propose the by-law to the Council and require the Council to consider and vote on the proposed by-law at a meeting
 - Applies to by-laws under the *Municipal Act*, *Planning Act*, and *Development Charges Act*
 - Mayor shall provide to the clerk and to each member of Council a copy of the proposed by-law and the reasons for the proposal
 - Such by-law is passed if more than one-third of the members of Council vote in favour of the by-law
 - Mayor may vote in a vote to pass the proposed by-law
 - Procedure By-law does not apply

Powers to Advance Provincial Priorities (cont'd)

- Veto Powers (s. 284.11)
 - If the Mayor is of the opinion that all or part of a by-law could potentially interfere with a prescribed provincial priority, the Mayor may provide written notice to the Council of the intent to consider vetoing the by-law
 - Applies to by-laws under the *Municipal Act*, *Planning Act*, and *Development Charges Act*
 - Mayor shall provide the written notice within 2 days after Council voted in favour of by-law
 - By-laws passed by Council are deemed not to have been passed until 2 days after Council voted in favour of the by-law, unless the Mayor has provided written approval of the by-laws
 - Mayor may veto the by-law within 14 days after Council voted in favour of the by-law by providing a written veto to the clerk, including the reasons for the veto, on the day of the veto
 - Clerk to provide the Mayor's written veto document to each member of Council and make it available to the public by the next business day
 - Subject to Council override, a vetoed by-law is deemed not to have been passed
 - Council may override the Mayor's veto if two-thirds vote to override it within 21 days
 - Mayor may vote in a vote to override a veto
 - If Council overrides the veto, the by-law is deemed to have passed on the day Council votes to override
 - Procedure By-law does not apply

Powers re Administrative and Political Structure of the Town

- Powers re Chief Administrative Officer (CAO) (s. 284.5)
 - Mayor assigned the power to appoint and dismiss the CAO, regardless of when CAO started
 - CAO continues in their position unless dismissed by the Mayor
 - Mayor may delegate this power to Council
- Powers re Organizational Structure (s. 284.6)
 - Mayor assigned the power to determine the organizational structure of the municipality
 - Existing organizational structure continues unless changed by the Mayor
 - Mayor may delegate this power to Council or to CAO
- Directions to Municipal Employees (s. 284.3)
 - Mayor may in writing exercise the powers of the municipality to direct employees to:
 - Undertake research and provide advice on policies and programs
 - Carry out duties related to the exercise of the power or performance of the duty, including implementing any decisions made by the Mayor
 - When directing employees, the Mayor shall provide a written record of the direction to the clerk and CAO by the next business day

Powers re Administrative and Political Structure of the Town (cont'd)

- Employment Matters (s. 284.6)
 - Mayor assigned the power to hire, dismiss, or exercise any other prescribed employment powers with respect to the head of any division or the head of any other part of the organizational structure, regardless of when their employment started
 - No other “employment powers” have yet been prescribed
 - Statutory officials are exempt from this power, including:
 - Clerk or Deputy Clerk
 - Treasurer or Deputy Treasurer
 - Integrity Commissioner
 - Ombudsman
 - Auditor General
 - Registrar for Lobbying Matters
 - Chief Building Official
 - Fire Chief
 - Existing heads of any part of the organizational structure continue in their positions unless dismissed by the Mayor

Powers re Administrative and Political Structure of the Town (cont'd)

- Powers re Committees (s. 284.8)
 - Mayor assigned the following powers with respect to committees comprised solely of members of Council:
 - The power to establish or dissolve committees
 - The power to appoint chairs and vice-chairs of committees
 - The power to assign functions to committees
 - Chairs and vice-chairs of a Council committee continue in their position unless their appointment is revoked by the Mayor
 - Chairs and vice-chairs may be dismissed regardless of when that person started
 - Mayor may delegate these powers to Council
- Powers re Local Boards (s. 284.7)
 - Mayor assigned the power to appoint chairs and vice-chairs of prescribed local boards
 - None have been prescribed to date
 - Chairs and vice-chairs of local boards continue in their position unless their appointment is revoked by the Mayor, regardless of when that person started in their position
 - Mayor may delegate these powers

Duty to Prepare Annual Budgets

- Powers and Duties re Budget (s. 284.16)
 - Mayor assigned the powers and duties of the municipality with respect to proposing and adopting a budget
 - On or before February 1 of each year, the Mayor shall prepare a proposed budget, including estimates of all sums required, and provide it to Council and make it available to the public
 - Duty to prepare and adopt a budget cannot be delegated by the Mayor
 - Duty to prepare and adopt a budget passes to Council only if the Mayor does not propose a budget to Council by February 1
 - Budgets proposed by the Mayor for the municipality shall be adopted in accordance with the regulations (s. 284.16(6))
 - Budgets proposed by the Mayor are now deemed adopted by running through the amendment, veto, and veto override process within the prescribed time frame in the regulation that commences once the Mayor proposes the budget to Council, not by a separate vote of Council

Duty to Prepare Annual Budgets (cont'd)

- Budget Amendments, Vetoes, and Veto Overrides
 - Within 30 days, Council may pass a resolution to amend the budget proposed by the Mayor
 - If no such resolution, proposed budget deemed to be adopted by the municipality
 - Within 10 days, Mayor may veto a Council resolution making an amendment to the budget
 - If no such veto, proposed budget deemed to be adopted by the municipality, as amended
 - If a veto, within 15 days Council may override the Mayor's veto by a two-thirds vote
 - Mayor may vote in a vote to override the veto
 - If no veto override, the proposed budget deemed to be adopted by the municipality, subject to the veto; if Council overrides a veto, budget deemed adopted as amended by Council
 - So if all steps run their full course, the latest the budget shall be deemed adopted is 55 days in total after the Mayor provides the proposed budget to Council
 - However, the adoption process can be expedited by the Mayor and Council, who each have the discretion to shorten their own time frames in the process
 - Mayor may also prepare a proposed an in-year budget amendment if a supplementary levy is required
 - Similar process for amendments, vetoes, and veto overrides as in the annual budget process, subject to shorter time frames

Supporting Provisions

- **In Writing (s. 284.4)**
 - Mayor shall exercise a power or perform a duty under Part VI.1 in writing and provide the written record by the next business day to each member of Council and to the clerk
 - Subject to MFIPPA, the written record shall be made available to the public
- **Municipal Conflict of Interest Act Requirements Apply**
 - Where Mayor has pecuniary interest in any matter of the municipality, Mayor shall disclose the interest by filing a written statement of the interest and its general nature with the clerk
 - Mayor shall not use any strong mayor powers or duties with respect to the matter
 - Mayor shall not use their office in any way to attempt to influence any decision or recommendation of the municipality that results from consideration of the matter
 - Town to maintain a public registry of declared interests
- **Vacancy (s. 284.12)**
 - In case of vacancy, strong mayor powers transfer to a newly elected Mayor, but not to an appointed Mayor (where vacancy occurs after March 31 in the year of a regular election)
- **Immunity (s. 284.14)**
 - Strong mayor powers exercised legally and in good faith may not be quashed or open to review by the courts because of the supposed unreasonableness of the decision

Implementation

- In summary, Part VI.1 of the *Municipal Act, 2001* sets out special powers and duties for the head of council in designated municipalities
- O.Reg. 530/22 has been amended to expand the list of designated municipalities, including Oakville, that are now subject to the strong mayor provisions of the *Municipal Act*
- The Province also included one minor housekeeping amendment in the regulation to clarify that it is the lower-tier municipality, not the upper-tier, that fills a vacancy that may arise in both Councils from the vacancy of a head of council
- The Ontario Regulatory Registry posting regarding O.Reg. 530/22 states:
 - “Local impacts will depend on how the heads of council (HOC) in designated municipalities choose to use these strong mayor powers and how the municipality will support the implementation of these powers and duties for the HOC. There are no requirements in the regulations that would result in new administrative costs for municipalities. Municipalities may choose to update local processes and policies at any time, based on their local needs and circumstances.”
- So while there is no discretion to refuse to accept the strong mayor powers, heads of council in designated municipalities do have discretion whether and how to use the powers and duties, within the limits of the law
- Staff have studied initiatives undertaken by Toronto and Ottawa to implement the strong mayor powers processes, including hosting webpages posting written Mayoral Decisions, and the Mayor issuing written approval of by-laws passed at a Council meeting to give them immediate effect (See now: <https://www.oakville.ca/mayoral-decisions/>)

Conclusion

- Staff continue to review the legislation and regulations and confer with other municipalities to determine best practices in ensuring that Town processes, by-laws, policies, and other governing documents are consistent with the law
- The Province has left much of the content and details to be defined by evolving regulation, with some gaps and ambiguities presenting implementation challenges for affected municipalities
- In the face of such gaps and ambiguities, and with the timing and content of any new or further regulations unknown, each impacted municipality is tasked with how best to interpret and implement the assignment of the new powers and duties in the Act
- These factors, together with the discretion left to each head of council as to whether and how best to exercise these powers in their municipality, is likely to lead to a range of different approaches, applications, policies, practices, and procedures among designated municipalities
- By the same token, such flexibility on how the powers and duties are exercised also provides an opportunity for heads of council to determine what is most appropriate and responsive to the local context and needs of each municipality