

Deemed members

19. The directors and officers of a corporation shall be deemed to be members for the purposes of the *Municipal Conflict of Interest Act*.

Deemed institutions

20. A corporation that is a wholly-owned corporation or a corporation whose business or activities include the provision of administrative services to any municipality, local board, public hospital, university, college or school board is deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.

Status of corporation

21. (1) A corporation is not a local board for the purposes of any Act.

(2) Despite subsection (1), a corporation shall be deemed to be a local board for purposes of subsection 270(2) of the Act, and for the purposes of the *Environmental Assessment Act*, the *Municipal Conflict of Interest Act*, the *Emergency Management and Civil Protection Act*, and subsection 56.2(3) of the *Capital Investment Plan Act, 1993*.

(3) Despite subsection (1), if a corporation is wholly-owned, it shall be deemed to be a local board for the purposes of the *Development Charges Act, 1997*.

Result of non-compliance

22. Any of the following matters may be considered sufficient cause under any Act to cancel the certificate of incorporation of a corporation or the letters patent or supplementary letters patent of a corporation:

1. The corporation does not meet the requirements of this Regulation.
2. A certificate is issued under the *Business Corporations Act* or any other Act under which a municipality establishes a corporation that is inconsistent with this Regulation.
3. Letters patent or supplementary letters patent are granted under any Act that are inconsistent with this Regulation.
4. The corporation acts outside the purposes to which it is restricted by its articles or letters patent.
5. The fact that the municipality did not comply with the requirements of section 12 in relation to the incorporation.

BUSINESS IMPROVEMENT AREAS

204. (1) **Designation of improvement area** — A local municipality may designate an area as an improvement area and may establish a board of management,

- (a) to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and
- (b) to promote the area as a business or shopping area.

(2) **Corporation** — A board of management is a corporation consisting of the number of directors established by the municipality.

(2.1) **Local board status** — A board of management is a local board of the municipality for all purposes.

~~(3) Composition~~ — A board of management shall be composed of,

- (a) one or more directors appointed directly by the municipality; and

(b) the remaining directors selected by a vote of the membership of the improvement area and appointed by the municipality.

X (4) **Membership** — Members of an improvement area consist of persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.

X (5) **Determining tenancy** — In determining whether a person is a tenant or not, the clerk of the municipality may accept a list provided under clause 210 (2) (b) or the declaration of a person that the person is a tenant and the determination of the clerk is final.

(6) **One vote** — Each member of an improvement area has one vote regardless of the number of properties that the member may own or lease in the improvement area.

(7) **Nominee** — A corporate member of an improvement area may nominate in writing one individual to vote on behalf of the corporation.

(8) **Joint nominee** — Subject to subsection (6), one individual may be nominated for voting purposes by two or more corporations that are members of an improvement area.

(9) **Refusal to appoint** — The municipality may refuse to appoint a person selected by the members of an improvement area, in which case the municipality may leave the position vacant or direct that a meeting of the members of the improvement area be held to elect or select another candidate for the municipality's consideration.

(10) **Term** — The term of the directors of a board of management is the same as the term of the council that appointed them but continues until their successors are appointed.

(11) **Reappointment** — Directors are eligible for reappointment.

(12) **Vacancies** — Subject to subsection (9), if a vacancy occurs for any cause, the municipality may appoint a person to fill the vacancy for the unexpired portion of the term and the appointed person is not required to be a member of the improvement area.

205. (1) **Budget** — A board of management shall prepare a proposed budget for each fiscal year by the date and in the form required by the municipality and shall hold one or more meetings of the members of the improvement area for discussion of the proposed budget.

(2) **Council to approve** — A board of management shall submit the budget to council by the date and in the form required by the municipality and the municipality may approve it in whole or in part but may not add expenditures to it.

(3) **Limitations** — A board of management shall not,

- (a) spend any money unless it is included in the budget approved by the municipality or in a reserve fund established under section 417;
- (b) incur any indebtedness extending beyond the current year without the prior approval of the municipality; or

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(c) borrow money.

(4) **Limitations on power** — Section 65 of the *Ontario Municipal Board Act* and section 401 of this Act apply to the municipality's approval under clause (3) (b) in the same manner as if it were incurring a debt of the municipality.

206. **Notice** — A board of management shall give reasonable notice to the general membership of the improvement area of a meeting to hold a vote under clause 204 (3) (b) or for the purposes of a discussion under subsection 205 (1).

207. (1) **Annual report** — A board of management shall submit its annual report for the preceding year to council by the date and in the form required by the municipality and the report shall include audited financial statements.

(2) **Auditor** — The municipal auditor is the auditor of each board of management and may inspect all records of the board.

208. (1) **Funds to be raised** — The municipality shall annually raise the amount required for the purposes of a board of management, including any interest payable by the municipality on money borrowed by it for the purposes of the board of management.

(2) **Special charge** — The municipality may establish a special charge for the amount referred to in subsection (1),

(a) by levy upon rateable property in the improvement area that is in a prescribed business property class; or

(b) by levy upon rateable property in the improvement area that is in a prescribed business property class and that, in council's opinion, derives special benefit from the improvement area, which levy may be calculated using different percentages of the assessment for one or more separately assessed properties or categories of separately assessed properties in the prescribed class if the resulting levy is equitable in accordance with the benefits that, in council's opinion, accrue to the properties from the activities related to the improvement area.

(3) **Minimum and maximum charges** — The municipality may establish a minimum or maximum charge or both, expressed for one or more separately assessed properties or categories of separately assessed properties in a prescribed class, as,

(a) percentages of the assessed value of rateable property in the improvement area that is in a prescribed business property class;

(b) dollar amounts; or

(c) percentages of the board of management's annual budget.

(4) **Effect of by-law** — When a by-law under subsection (3) is in force,

(a) the amount of a charge levied in a year under subsection (2) shall not, when calculated for the individual property in the prescribed class to which it applies, be less than or greater than the amount of the applicable minimum and maximum charge for the property established under the by-law; and

(b) if necessary for a fiscal year to raise the amount referred to in subsection (1) because a minimum or maximum charge applies to one or more separately assessed properties or categories of separately assessed properties in the prescribed class, the municipality shall for the year adjust any charges applicable to the remaining individual properties or subclasses of properties in the prescribed class by adjusting the percentage or percentages of assessment established under subsection (2) for those properties.

(5) **Exclusion** — Section 210 does not apply to an adjustment made under clause (4) (b).

(6) **Borrowings** — If only a part of money borrowed by the municipality in any year for the purposes of a board of management is required to be repaid in that year or a subsequent year, only that part and any interest payable on the total amount shall be included in the levies under this section in that year or subsequent year, respectively.

(7) **Priority lien status** — Charges levied under this section shall have priority lien status and shall be added to the tax roll.

Related provisions

s. 1(2.1)-(3) (Priority lien status).

209. Changes to boundary — The municipality may alter the boundaries of an improvement area and the board of management for that improvement area is continued as the board of management for the altered area.

Comments on the provision

Where an enlarged improvement area is designated by by-law, all persons in the designated area were entitled to notice. The petition contemplated by the former s. 220(3) must be signed by at least one-third of persons in the entire designated area, and not simply one-third of persons in the expanded area: *Kerr v. Peterborough (City)* (1999), 50 M.P.L.R. (2d) 313, 118 O.A.C. 144 (Ont. C.A.). [Editor's note: The 2001 Act appears to codify this result.]

210. (1) Notice — Before passing a by-law under subsection 204 (1), clause 208 (2) (b), subsection 208 (3) or section 209, notice of the proposed by-law shall be sent by prepaid mail to the board of management of the improvement area, if any, and to every person who, on the last returned assessment roll, is assessed for rateable property that is in a prescribed business property class which is located,

- (a) where the improvement area already exists, in the improvement area and in any geographic area the proposed by-law would add to the improvement area; and
- (b) where a new improvement area would be created by the proposed by-law, in the proposed improvement area.

(2) When notice received — A person who receives a notice under subsection (1) shall, within 30 days after the notice is mailed,

- (a) give a copy of the notice to each tenant of the property to which the notice relates who is required to pay all or part of the taxes on the property; and

- (b) give the clerk of the municipality a list of every tenant described in clause (a) and the share of the taxes that each tenant is required to pay and the share that the person is required to pay.
- (3) **Objections** — A municipality shall not pass a by-law referred to in subsection (1) if,
- (a) written objections are received by the clerk of the municipality within 60 days after the last day of mailing of the notices;
 - (b) the objections have been signed by at least one-third of the total number of persons entitled to notice under subsection (1) and under clause (2) (a); and
 - (c) the objectors are responsible for,
 - (i) in the case of a proposed addition to an existing improvement area,
 - (A) at least one-third of the taxes levied for purposes of the general local municipality levy on rateable property in all prescribed business property classes in the improvement area, or
 - (B) at least one-third of the taxes levied for purposes of the general local municipality levy on rateable property in all prescribed business property classes in the geographic area the proposed by-law would add to the existing improvement area, or
 - (ii) in all other cases, at least one-third of the taxes levied for purposes of the general local municipality levy on rateable property in all prescribed business property classes in the improvement area.
- (4) **Withdrawal of objections** — If sufficient objections are withdrawn in writing within the 60-day period referred to in clause (3) (a) so that the conditions set out in clause (3) (b) or (c) no longer apply, the municipality may pass the by-law.
- (5) **Determination by clerk** — The clerk shall determine whether the conditions set out in subsection (3) have been met and, if they are, shall issue a certificate affirming that fact.
- (6) **Determination final** — The determination by the clerk is final.
211. (1) **Repeal of by-law** — Council shall give notice in accordance with subsection 210 (1) of a proposed by-law to repeal a by-law under subsection 204 (1) if the municipality has received,
- (a) a resolution from the board of management requesting the repeal; or
 - (b) a request for the repeal signed by persons who are responsible for at least one-third of the taxes levied for purposes of the general local municipality levy on rateable property in all prescribed business property classes in the improvement area.
- (2) **Statement** — A person signing a request under clause (1) (b) shall state what amount of taxes on rateable property in the area that the person is required to pay.
- (3) **Time** — Council shall give the notice within 60 days after receiving the resolution or request.

(4) **Repeal** — Council shall repeal the by-law under subsection 204 (1) if requests for the repeal are received by the clerk of the municipality within 60 days after the last day of mailing of the notices and,

- (a) the requests have been signed by at least one-half of the total number of persons entitled to notice under subsection 210 (1) and under clause 210 (2) (a); and
- (b) those who have signed the requests are responsible for at least 50 per cent of the taxes levied for purposes of the general local municipality levy on rateable property in all prescribed business property classes in the improvement area.

(5) **Timing** — The repealing by-law must come into force on or before December 31 of the year in which it is passed.

(6) **Requests withdrawn** — If sufficient requests are withdrawn in writing within the 60-day period referred to in subsection (4) so that either condition set out in that subsection no longer applies, the municipality is not required to repeal the by-law.

(7) **Determination by clerk** — The clerk shall determine whether the conditions set out in clause (1) (b) and subsection (4) have been met and, if so, shall issue a certificate affirming that fact.

(8) **Determination final** — The determination by the clerk is final.

(9) **Restriction** — If the conditions of subsection (4) are not satisfied, council is not required to give notice under subsection (1) in response to a resolution or request for a period of two years after the last mailing of the notices.

(10) **Non-application** — No requirement under this section or under section 210 applies to the repeal by a municipality on its own initiative of a by-law under subsection 204 (1).

Related provisions

s. 251 (Notice).

212. Effect of by-law — A by-law passed under subsection 204 (1), subsection 208 (2) or (3), section 209 or subsection 211 (4) is not invalid by reason only that,

- (a) a person required to give a copy of a notice to a tenant or other information to the municipality under subsection 210 (2) has not done so;
- (b) the objections referred to in clause 210 (3) (b) have not been signed by at least one-third of the total number of persons entitled to receive notice under subsections 210 (1) and (2) because a person required to give a copy of the notice under subsection 210 (2) has not done so; or
- (c) the requests referred to in clause 211 (4) (a) have not been signed by at least one-half of the total number of persons entitled to notice under subsections 210 (1) and (2) because a person required to give a copy of the notice under subsection 210 (2) has not done so.

213. Tenants — For the purposes of clauses 210 (3) (c) and 211 (1) (b), subsection 211 (2) and clause 211 (4) (b), a tenant shall be deemed to be responsible for the part of the taxes that the tenant is required to pay under the tenant's lease or under sections 367 and 368.

214. (1) Dissolution of board — Upon the repeal of a by-law under subsection 204 (1), the board of management is dissolved and the assets and liabilities of the board become the assets and liabilities of the municipality.

(2) Liabilities exceed assets — If the liabilities assumed under subsection (1) exceed the assets assumed, the council may recover the difference by imposing a charge on all rateable property in the former improvement area that is in a prescribed business property class.

Related provisions

s. 195 (Dissolution of local boards).

215. Regulations — The Minister may make regulations prescribing one or more classes of real property prescribed under the *Assessment Act* as business property classes for the purposes of sections 204 to 214.

Related regulations

Tax Related Matters

O. Reg. 406/98, amended to O. Reg. 387/02

1. For the purposes of sections 204 to 214 of the Act, the commercial classes and the industrial classes, as defined in subsection 308 (1) of the Act, are the business property classes.

DISSOLUTION OF LOCAL BOARDS

216. (1) Power to dissolve or change local boards — Without limiting sections 9, 10 and 11, those sections authorize a municipality to dissolve or change a local board.

(2) Conflict — In the event of a conflict between a by-law described in subsection (1) and any provision of this or any other Act, excluding this section and sections 194 to 202, or in the event of a conflict with a regulation made under any other Act, the by-law prevails.

(3) Restriction — Despite subsection (1), a municipality shall not, in accordance with subsection (1), dissolve or change a local board that is,

- (a) a society as defined in subsection 3 (1) of the *Child and Family Services Act*;
- (b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*;
- (c) a committee of management established under the *Long-Term Care Homes Act, 2007*;

- (c.1) an appeal body established under section 8.1 of the *Planning Act*;
- (d) a police services board established under the *Police Services Act*;
- (e) a board as defined in section 1 of the *Public Libraries Act*;
- (f) a corporation established in accordance with section 203;
- (g) such other local boards as may be prescribed.

(4) **Exception, City of Greater Sudbury** — Despite subsection (3), the City of Greater Sudbury may, in accordance with subsection (1), change the number of members it appoints as its representatives on the board of health of the Sudbury and District Health Unit, subject to the following rules:

1. The number shall not be smaller than two or larger than seven.
2. At least one of the members shall also be a member of the council of the City.
3. At least one of the members shall not be a member of the council of the City.

(5) **Scope of power to change a local board** — Without limiting sections 9, 10 and 11, the power of a municipality to change a local board under those sections includes the power to pass by-laws with respect to,

- (a) the matters described in paragraphs 1 to 7 of subsection 196 (1), subject to the restrictions set out in section 196;
- (b) the assumption of a power or duty of the board, but if the power or duty was delegated to the board by the municipality, the municipality cannot assume the power or duty if it cannot revoke the delegation;
- (c) the delegation of a power or duty to the board to the extent authorized under this Act;
- (d) the restriction or expansion of the mandate of the board.

(6) **Dissolution, etc., of joint board** — If a municipality passes a by-law in accordance with subsection (1) to dissolve or change a local board which is a local board of the municipality and one or more other municipalities,

- (a) the by-law does not come into force until at least half of the municipalities, excluding the municipality that passed the by-law, have passed a resolution giving their approval to the by-law; and
- (b) when the by-law comes into force, the by-law is deemed to be a by-law passed by each of the municipalities of which the board is a local board.

(7) **Regulations** — For the purposes of this section, the Minister may, despite any Act, make regulations,

- (a) providing that any body performing any public function is a local board;
- (b) providing that a local board is a local board of the municipality specified in the regulation;

- (c) providing that a municipality does not have the power to dissolve or make a prescribed change to a local board specified in the regulation;
- (d) imposing conditions and limitations on the powers of a municipality under this section;
- (e) providing that, for the purposes specified in the regulation, a municipality is deemed to be a local board of the type dissolved or changed under this section;
- (f) providing that, for the purposes specified in the regulation, a municipality shall stand in the place of a local board dissolved or changed under this section;
- (g) providing for matters that, in the opinion of the Minister, are necessary or desirable to allow the council of a municipality to act as a local board, to exercise the powers of a local board or to stand in the place of a local board for any purpose;
- (h) providing that the provisions of any Act specified in the regulation do not apply to the council of a municipality acting as a local board, exercising the powers of a local board or standing in the place of a local board for any purpose;
- (i) providing for the continuation, cessation or amendment of any or all by-laws and resolutions of a local board which is dissolved or changed under this section;
- (j) providing that a municipality or local board pay money to each other or to another municipality or local board;
- (k) providing for transitional matters related to a dissolution of or change to a local board under this section.

Comments on the provision

Rather than enacting a code of restructuring, what is now s. 216 was merely intended to give municipalities additional powers to deal with their various boards. While the first line of what is now s. 216(7) implies a wide grant of regulatory power, that power is expressly limited to the purposes of that section. Where the legislature has expressly granted a power by a statute it should not lightly be assumed that it intended that this power could be suspended by the executive through regulation. There is no such legislative intent manifested in the wording of subs. (7): *Brantford (City) Public Utilities Commission v. Brantford (City)* (1998), 36 O.R. (3d) 419, 44 M.P.L.R. (2d) 151 (Ont. C.A.).

The legislature under the *Police Services Act* ("PSA") intended a municipal council to have the sole authority to decide to disband or dissolve a police service. If a municipal council chooses to establish a police force under PSA s. 5(1)1, the board has the powers and responsibilities set out in Part III of that Act. If council chooses to have policing delivered by the OPP under s. 5(1)5, the police services board will have the power and responsibilities set out in PSA s. 10(9). The legislature intended local police boards to be autonomous from municipal councils. The rationale for this autonomy is to prevent political meddling in the day-to-day affairs of how a police force operates. Operational autonomy is different from the autonomy given to councils to decide on how to deliver police services in a community. Section 40 of

the PSA is intended to allow a board to discharge a member of a police force and to generally deal with all severance and pension issues. This section does not give a board the power to decide to disband a police force. Only council has the authority to decide to disband or dissolve a police service and to select an alternate method of police servicing for the community. Once a council makes this decision then a board is required to deal with pension and severance matters: *Kenora Police Services Board v. Ontario Civilian Commission on Police Services* (2008), 2008 CarswellOnt 5884 (S.C.J.).

This section and what is now Regulation 214/96 are broad enough to allow a municipal council to terminate individual members from their boards: *Heath v. Tillsonburg (Town)* (2003), 63 O.R. (3d) 366 (Ont. S.C.J.).

Related provisions

Section 7(3) permits a municipality to exercise its powers under s. 216 to override a special Act even if the special Act is more specific and was enacted more recently. With respect to restructuring orders, see s. 186.

Related regulations

Dissolution of and assumption of powers of local boards

O. Reg. 582/06

Dissolution of local board

1. (1) If a municipality passes a by-law to dissolve a local board,
 - (a) the municipality stands in the place of the board for all purposes, on and after the effective date;
 - (b) the powers of the board vest in the municipality on the effective date;
 - (c) all rights, claims, undertakings, obligations, assets and liabilities of the board vest in the municipality on the effective date;
 - (d) the by-laws and resolutions of the board,
 - (i) are continued as by-laws and resolutions of the municipality, on the effective date, and
 - (ii) remain in force until repealed or amended;
 - (e) the board ceases to exist on the effective date; and
 - (f) if the board is a corporation, it is dissolved on the effective date.
- (2) The effective date for the purposes of subsection (1) is the day the by-law comes into force.
- (3) If a municipality passes a by-law to dissolve a local board of the municipality and one or more other municipalities, each municipality stands in the place of the board for the purposes of that municipality on the day the by-law comes into force, and subsection (1) applies with necessary modifications.

Assumption of powers from local board

2. (1) If a municipality passes a by-law to assume one or more powers from a local board,
 - (a) the municipality stands in the board's place for the purpose of exercising the assumed powers, on and after the effective date;
 - (b) the assumed powers vest in the municipality on the effective date;
 - (c) all rights, claims, undertakings and obligations, assets and liabilities of the board pertaining to the assumed powers vest in the municipality on the effective date; and
 - (d) the board's by-laws and resolutions pertaining to the exercise of the assumed powers,
 - (i) are continued as by-laws and resolutions of the municipality, on the effective date, and
 - (ii) remain in force until repealed or amended.

- (2) The effective date for the purposes of subsection (1) is the day the by-law comes into force.
- (3) If a municipality passes a by-law to assume one or more powers from a local board of the municipality and one or more other municipalities, each municipality stands in the place of the board for the purpose of exercising the assumed powers on the day the by-law comes into force, and subsection (1) applies with necessary modifications.
- (4) Subsections (1), (2) and (3) do not apply to police villages.

Certain bodies to be local boards

3. For the purposes of this Regulation,
 - (a) a police village is a local board of the municipalities within which it is located;
 - (b) The Hamilton Entertainment and Convention Facilities Inc. is a local board of the City of Hamilton; and
 - (c) The Centre in The Square Inc. is a local board of The Corporation of the City of Kitchener.

CHANGES TO COUNCIL

217. (1) Composition of council of local municipality — Without limiting sections 9, 10 and 11, those sections authorize a local municipality to change the composition of its council subject to the following rules:

1. There shall be a minimum of five members, one of whom shall be the head of council.
 2. The members of council shall be elected in accordance with the *Municipal Elections Act, 1996*.
 3. The head of council shall be elected by general vote.
 4. The members, other than the head of council, shall be elected by general vote or wards or by any combination of general vote and wards.
 5. The representation of a local municipality on the council of an upper-tier municipality shall not be affected by the by-law of the local municipality under this section.
- (2) [Repealed.]
- (3) **Coming into force —** A by-law described in this section does not come into force until the day the new council is organized,
- (a) after the first regular election following the passing of the by-law; or
 - (b) if the by-law is passed in the year of a regular election before voting day, after the second regular election following the passing of the by-law.
- (4) **Election —** The regular election held immediately before the coming into force of a by-law described in this section shall be conducted as if the by-law was already in force.
- (5) **Term unaffected —** Nothing in this section authorizes a change in the term of office of a member of council.