

Pecuniary interest for municipal councillors

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Pecuniary Interest for Municipal Councillors

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It is important to recognize that this guide has been developed as a reference for, and as an explanatory document to the *Municipal Government Act (MGA)*. This guide is not legal advice, and it cannot be used in place of consulting with a lawyer. This guide cannot anticipate every aspect, circumstance or situation that municipalities or councillors may encounter. If a municipality or councillor needs help finding a lawyer, please visit the Law Society of Alberta website.

Should this guide conflict with the *Municipal Government Act (MGA)*, RSA 2000, Chapter M-26, in word or interpretation, the legislation shall prevail.

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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 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 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, your 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; and/or
- 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.

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 of any interest:

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

This section 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; and
- 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. 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 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; or
- 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 agents to identify a contract that 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 family members 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.

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Copies of the *Municipal Government Act* and the *Local Authorities Election Act* can be purchased from Alberta Queen's Printer Bookstore or accessed on the Queen's Printer website:

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