

## **A Guide to the *Local Governance Act***

**New Brunswick Department of Environment  
and Local Government**

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## **Introduction**

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The *Local Governance Act* came into force on January 1, 2018. The *Act* sets out the powers and responsibilities of New Brunswick's various local entities. It also provides the legislative framework for the general operation of municipalities, rural communities, regional municipalities, and the administration of the province's unincorporated areas, known as local service districts (LSDs).

As the new *Local Governance Act* replaces the former *Municipalities Act*, this guide is intended to provide an overview of the new legislation. It is for information purposes only, and is not an authoritative interpretation of the *Local Governance Act*. In the event of any inconsistency between this document and the *Local Governance Act* or its regulations, the *Local Governance Act* or its regulations will prevail. This document is not and should not be construed as legal advice. A lawyer should be consulted on questions about the application or interpretation of the laws of New Brunswick as they relate to the subject matter of this document.

Other agencies, such as provincial departments, the federal government, and municipalities, may have requirements not addressed or included in this guide.

This guide may be reviewed and updated periodically as appropriate by the Department of Environment and Local Government.

## **Part 1 – Definitions, Interpretation and Application**

### **Sections of the *Local Governance Act*: 1 - 3**

#### **Description:**

Part 1 provides definitions for terms found throughout the *Act*. In a few instances there are also definitions provided in other parts of the *Act*, but they generally pertain to specific sections and not the entire *Act*. Part 1 also specifies the precedence that the *Local Governance Act* has in relation to municipal charters, private or special *Acts*, or to by-laws enacted by a local government. More specifically, if there is a conflict between the *Local Governance Act* and any of the aforementioned, the *Local Governance Act* prevails.

#### **New Provisions and Intent:**

It is important to highlight that the term "local government" is used extensively in the *Act*. It is intended to mean either the body corporate (the actual local government organization – municipalities, regional municipalities and rural communities) or the area

covered by the local government (i.e., the community itself) depending on the context. In some cases, the term “rural community” will be used for provisions directly relating to rural communities. Where the term “municipality” is used, it refers to cities, towns or villages only.

One of the notable new definitions included in this part is for the term “economic development”. The matter of economic development is further addressed in Part 9 (Section 104) of the *Act*.

## **Part 2 – Legal Status, Purposes and Powers**

### **Sections of the *Local Governance Act*: 4 – 20**

#### **Description:**

Part 2 sets out the powers for local governments as well as the limitations with respect to these powers. More specifically, the areas covered include:

- Establishment of local governments as corporate bodies
- Defining “municipal purposes”
- Powers of local governments and interpretation of such powers
- Powers relative to the establishment of corporations
- Delegation of powers
- By-law making powers (areas of authority, required by-laws, specific requirements, applicability, process to enact, limitations )

#### **New Provisions and Intent:**

This part includes the most substantive and important changes to the legislative framework for local governments in New Brunswick. In particular, the *Act* provides local governments with greater flexibility to address matters of local concern through the following:

#### **Defining Municipal Purposes**

The new *Act* outlines a broad definition for “municipal purposes” in order to provide guidance and parameters around what local governments may undertake for their respective communities. There are a number of references throughout the *Local Governance Act* that specify a local government may carry out a particular activity, but that this activity must be in line with “municipal purposes”. For example, subsection 102(1) of the *Local Governance Act* specifies that “... a local government may, by

*resolution of council, make a grant of money or an in-kind grant for **municipal purposes** to any of the following...*". Similar references are provided with respect to a local government making by-laws, borrowing money, conducting economic development, and exercising its natural person powers.

### **Services provided by a local government**

It should also be mentioned that there is no longer a schedule in the legislation listing the services a municipality may provide. Rather, the "municipal purposes" definition specifies that one of the purposes of a local government is "*...to provide services, facilities or things the council considers necessary or desirable for all or part of the local government...*". Furthermore, the *Local Governance Act* specifies that by-laws may be enacted respecting the programs and services offered by the local government. For example, a by-law could be enacted that describes how snow removal services are to be provided by the local government.

Note that a listing of services is included in the *Local Governance Act* in Part 15 that pertains specifically to local service districts.

### **Granting of Natural Person Powers**

The *Local Governance Act* provides local governments with "natural person powers", but with some limitations. These powers can be exercised in fulfilling municipal purposes. Essentially, natural person powers give local governments the authority to exercise various corporate powers not explicitly spelled out in the legislation. For example, the authority to carry out day-to-day tasks such as entering into contracts, hiring staff for the organization, sue and/or be sued, etc., can all be covered through natural person powers.

### **Broad Interpretation of Powers of Local Governments**

In order to further strengthen a local government's authority to deal with local matters, the *Act* recognizes local governments as a responsible and accountable level of government. Furthermore, the *Act* provides that "*...the powers contained in the new legislation are to be interpreted broadly in order to provide broad authority to the council to enable it to govern the affairs of the local government as it considers appropriate and to enhance the council's ability to respond to issues in the local government.*" The intent of this section of the *Act* is to reinforce the notion that local governments have a broad array of powers to deal with issues of local concern (as long as the matter falls within municipal purposes).

The *Act* contains limitations on the use of natural person powers. They are identified throughout the *Act* and include:

- Specific purposes for which corporations may be created
- Not being permitted to hold securities in a for-profit corporation
- Limitations on delegation of powers
- Limitations on borrowing of money

### **Providing authority to establish corporations**

The *Act* provides local governments with the authority to establish not-for-profit corporations for municipal purposes. However, the establishment of these corporations is limited to the provision of a service, the operation of a utility, encouraging economic development, and the management of properties of the local government. Note that a local government cannot establish a corporation for the purposes of making a profit, or acquire or hold securities of a corporation that operates for a profit.

### **Providing Broad Categories of By-law Making Authority**

Rather than providing a series of specific (and detailed) items for which local governments may make by-laws, the *Act* provides, for the most part, relatively broad categories of by-law making authority. This authority may be exercised in fulfilling the municipal purposes set out in Section 5 of the *Act*.

The following three examples illustrate how the legislation has changed with respect to by-law making authority.

**Example 1:** To deal with matters related to parking, the previous legislation outlined in detail how parking could be regulated (e.g., provide for parking spaces in parking zones, provide for the installation of parking meters in or near parking spaces, provide for the installation of pay and display machines in or near parking zones, impose a toll for the parking of a vehicle in a parking space and fix the amount thereof for different periods of time, etc.). The new legislation simply indicates that a local government may enact a by-law regulating “...*the use of motor vehicles or other vehicles on or off roads, streets and highways, and the regulation of traffic, **parking** and pedestrians*”. If new parking-related technology emerges, local governments will have the flexibility to use it in the management and regulation of parking.

**Example 2:** In the previous legislation, there was an extensive and detailed section dedicated to how animals could be regulated by local governments. The new *Act* now

states that a local government may enact by-laws regulating “*wild, domestic and exotic animals and activities in relation to them, including animal control activities*”.

**Example 3:** The *Act* provides by-law making authority regarding the safety, health and welfare of people and property”. Using this broad category of by-law making authority, a local government could enact by-laws to deal with a variety of matters. Examples include smoking in outdoor public properties, the idling of vehicles, and the use of fireworks.

It should be emphasized that local governments will not have to immediately revise their by-laws to reflect the new legislation. Other than the new requirements for by-laws (e.g., code of conduct), a local government’s by-laws continue to have effect. Should a local government choose to revise some or all of its by-laws, care should be taken to ensure that appropriate legislative authority is cited.

### **Licenses, permits and approvals**

The *Local Governance Act* outlines the authority a local government has with respect to issuance of licenses, permits and approvals. This section also specifies that a local government has the authority to prohibit the taking of any action if a particular licence, permit or approval has not been issued.

### **Power to differentiate**

In making by-laws, local governments have the power to “*differentiate in any way and on any basis a local government considers appropriate.*” The intent of this provision is that a local government could apply a by-law to different geographic areas and to different groups of people. Examples of such bylaws include: prohibiting idling of vehicles in certain areas of the community; closing off a section of a downtown street to motorized traffic during a certain time of the day and year, and putting in place a curfew for a certain section of the community (e.g., the downtown), and that applies to individuals of a certain age.

### **Required by-laws**

Sub-section 10(2) outlines the by-laws that local governments are required to enact. Along with being required to have a procedural by-law, local governments are required to enact the following by-laws: 1) establishing a code of conduct for members of council; 2) requiring vaccinations against rabies for dogs; and 3) the provision of the service of police protection.

### **Application of by-laws**

The *Act* specifies that a local government's by-laws can only apply within its territorial limits (unless there are specific provisions in this *Act* or in other *Acts* that provide otherwise). In addition, the legislation provides that the by-laws of a local government enacted under section 10 of the *Local Governance Act* do not apply to Crown lands that are under the control of the Minister of Energy and Resource Development, land vested in the Crown in right of Canada, and infrastructure of the Crown in right of the Province or of the Crown in right of Canada.

### **Enactment of by-laws**

The process to enact by-laws remains largely the same. However, if local governments choose to use a notice in the process so that the by-law does not have to be read in its entirety at a council meeting, they now have the flexibility to post these notices on their websites, as long as the notices are available for examination by the public in the office of the clerk. A summary may describe the proposed by-law by title and general subject matter. The matter of giving notice is dealt with in more detail in section 70 of the *Act* (See Part 6).

### **Limitations on by-laws respecting businesses**

Local governments have the authority to enact by-laws respecting "businesses, business activities and persons engaged in business". However, this by-law making authority is limited to the issuance of licenses and permits, classification, and hours of operation. The term "classification" is intended to cover instances where a local government wishes to differentiate types of businesses that would be subject to all or certain sections of a by-law. For example, a local government may want to differentiate retail stores from restaurants / pubs for purposes of establishing hours of operation.

### **Provincial approval**

Under the *Local Governance Act*, the only by-law requiring provincial approval is a by-law made under paragraph 10(1)(p) that closes all of or a portion of a highway within a local government's territorial limits that is built and maintained by or under the supervision of the Department of Transportation and Infrastructure, the New Brunswick Highway Corporation, or a project company. This must be approved by the Lieutenant-Governor in Council as specified in Section 20, and this process will be co-ordinated by the Department of Environment and Local Government, with input from the Department of Transportation and Infrastructure.



## **Part 3 – Incorporation, Adjustments, Dissolution and First Elections**

**Sections of the *Local Governance Act*: 21-41**

### **Description:**

Part 3 sets out the required actions to be taken prior to a community restructuring. It also sets out what is required in a regulation to create a new or expanded local government, or one that is reduced in size. Matters regarding first elections, the powers of affected councils and the continuance of by-laws are also addressed.

### **New Provisions and Intent:**

This part of the *Act* was modernized, and is carried forward from the *Municipalities Act*. As part of the modernization, dissolutions no longer require a special *Act* of the Legislature. Rather, the Lieutenant-Governor in Council may, by regulation, dissolve a local government. In addition, slight modifications were made to align timelines for first elections and the timelines in the *Municipal Elections Act* for recounts. As well, with the changes to the *Rural Plan Regulation* in the *Community Planning Act*, a provision was also included in this part to ensure the continuation of rural plans where they exist.

## **Part 4 - Divisions into Wards, Composition and Powers and Duties of Council**

**Sections of the *Local Governance Act*: 42 – 49**

### **Description:**

Sections 42 through 49 set out powers and processes in relation to the composition of council, the division of a local government into wards, and the by-law-making powers of council for composition, wards and remuneration.

These sections of the *Act* govern:

- Power to divide a local government into wards
- Composition of council – for a local government not divided into wards
- Composition of council – for a local government divided into wards
- Requirements for by-laws relating to wards and council composition
- Deemed by-law dividing a local government into wards
- Deemed by-law determining composition of council
- Powers and duties of mayors and councillors

- Salaries and allowances of mayor and councillors

### **New Provisions and Intent:**

These sections were mostly reorganized and reworded. A few areas were enhanced or clarified as follows:

- items to be included in a remuneration of council by-law;
- election of a deputy mayor must be provided for in a procedural by-law, and
- changes in wards and composition of council within the four-year period following a restructuring can be approved by the Minister instead of the Lieutenant-Governor in Council.

## **Part 5 – Vacancies, Elections, Accepting Office and Plebiscites**

### **Sections of the *Local Governance Act*: 50 - 62**

#### **Description:**

This part sets out the provisions related to the following:

- Vacancies on a council
- Filling a vacancy on a council
- Reduced requirements for quorum in case of a vacancy
- Reduced number of council members in case of a vacancy
- Schedule of general elections for council
- Resignation and nomination for office on a council
- Restriction on powers of outgoing council
- Effect of election of ineligible person
- Accepting office on a council
- Plebiscites

#### **New provisions and Intent:**

The new *Act* provides the choice for a person elected to an office on a council to accept the office either by taking and subscribing the oath of office or by making and subscribing the affirmation of office that are prescribed by regulation.

Section 54 addresses the scheduling of general elections for council. Municipal elections are now referred to as general elections as opposed to quadrennial elections.

Section 59 addresses plebiscites. Under subsection 59(3), a proposal that will be voted on through a plebiscite shall be worded as a question for which the voter may only answer “yes” or “no”. Pursuant to subsection 59(4), if over 50% of those who voted in a plebiscite vote in favour of the proposal, the council shall implement the proposal without delay. Previous legislation had set a 60% threshold.

## **Part 6 – Council Meetings**

**Sections of the *Local Governance Act*: 63 - 70**

### **Description:**

Part 6 sets out the provisions relating to the following:

- Schedule for first meeting
- Acts and decisions of council
- Quorum
- Voting
- Open and closed meetings
- Electronic meetings
- Means of giving notice

### **New provisions and Intent:**

Section 63 of the *Local Governance Act* addresses the scheduling of the first council meeting following the general election. Previously, the legislation indicated that if the clerk did not fix a date for the first meeting of a council following a municipal election, the first meeting of council would be held on the fourth Monday of May following the election. This has been removed. Subsection 63(2) states that the first meeting of council shall be held no later than June 15, unless a candidate has not been declared elected by that date, in which case, the first meeting shall be held as soon as the circumstances permit after the declaration.

Section 65 addresses quorum requirements for council meetings. A majority of the members of council constitutes a quorum. Note that subsection 65(3) of the *Act* specifies that quorum does not change as a result of council vacancies. By way of an example illustrating the quorum calculation, if the composition of council is one mayor and five councillors, the total number of council members is six; therefore, quorum is four.

Section 69 addresses electronic meetings. Subject to this section, and a local government's procedural by-law, members of council are permitted to use electronic means to participate in a council meeting. There are restrictions as to the number of meetings in which council members may participate electronically. A member of council who wishes to participate in a meeting using this means must provide sufficient notice to the clerk. This enables the clerk to provide all relevant documents in a timely fashion and will provide sufficient notice to inform the public. If a council or committee meeting is open to the public, use of an electronic means can only be permitted if a notice to the public is given with specific information in the notice. If a member of council is participating electronically in a closed meeting of council, they must confirm at the beginning of the meeting that they are alone. Members of council who participate using this means are deemed to be present for the council meeting.

Section 70 addresses the means through which notice may be given. Notice may be given by one or more means as outlined in the *Act*: by newspaper, by radio or television, or posting the notice on the local government's website. As in the past, the newspaper, radio or television must have general circulation or must broadcast in the local government. In addition, if the local government has given notice using one or more of these methods, it may also post the notice on social media websites. In addition, the notice must be posted in the office of the clerk. This latter requirement has not changed.

As in other areas of the *Act*, sections have been renumbered and wording has been changed to modernize the language in the *Act*.

## **Part 7 – Officers and Employees**

**Sections of the *Local Governance Act*: 71 - 86**

### **Description:**

The intent of Part 7 is to provide for the appointment of statutory and other officers, assign powers and duties to them and provide for liability and indemnity. Provisions contained in the *Municipalities Act* dealing with the above topics have been reorganized and reworded and new provisions have been added. More specifically, the areas covered in Part 7 include:

- Appointed officers
- Appointment of by-law enforcement officers
- Power to appoint acting officers

- Powers and duties of the clerk
- Documents required to be available at the clerk's office
- Powers and duties of the treasurer
- Joint payment authorization
- Limit of liability
- Powers and duties of the auditor
- Powers and duties of by-law enforcement officers
- Powers and duties of chief administrative officer
- Solicitor of a local government
- Engineer of a local government
- Bonding of officers and employees
- Members of council not eligible for appointment or employment for one year
- Indemnity

### **New Provisions and Intent:**

#### **Appointment of by-law enforcement officers**

Councils are provided authority under the new *Local Governance Act* to appoint a by-law enforcement officer. Authority for a council to appoint such officers, as well as the requirement to provide remuneration to them is no longer provided under the *Police Act*; however, the powers and immunity provided to the enforcement officers continue to be provided under that *Act*.

#### **Powers and duties of the clerk**

Under the *Local Governance Act*, the clerk is now authorized to record meeting information electronically.

#### **Documents required to be available at the clerk's office**

The *Act* provides clarity on which documents must be made available for examination by members of the public by providing that any document required under the *Act* or prescribed by regulation, is to be made available for examination.

#### **Powers and duties of the treasurer**

The requirement that the treasurer maintain accounts and records of the financial information of the local government has been changed to reflect that they must be maintained in accordance with the *Control of Municipalities Act*. Further, the requirement regarding the year-end statement of finances has been modified to reflect that it must be done in order for the annual audit to be performed by the auditor.

### **Joint payment authorization**

The requirement for joint signing by the treasurer and mayor or other person appointed by council has been updated to include other forms of payment authorizations in addition to cheques.

### **Powers and duties of the auditor**

The duties have been updated to include duties prescribed under the *Control of Municipalities Act* along with any duties prescribed under the *Local Governance Act* and regulations.

### **Engineer of a local government**

The stipulation for the appointment of an engineer is that the person be a member of the Association of Professional Engineers and Geoscientists of New Brunswick, and be licensed to practice under the *Engineering and Geoscience Professions Act*. Previously, a person could be appointed who was a registered professional engineer.

### **Members of council not eligible for appointment or employment for one year**

One year must have elapsed before a former member of council can be appointed as an officer or be employed by the local government. However, this does not apply if the former member does not receive remuneration.

### **Indemnity**

In addition to being able to indemnify a member or former member of a local government, officers, members and employees of the local government corporations, and persons who provide services for no remuneration at the request and on behalf of the local government may also be provided with indemnity.

## **Part 8 – Conflict of Interest**

### **Sections of the *Local Governance Act*: 87 - 98**

#### **Description:**

Part 8 sets out the provisions relating to conflicts of interest and how they are to be handled. Specifically, these provisions address the following matters:

- Various definitions pertaining to conflict of interest
- To whom the provisions apply
- Situations where a conflict of interest exists
- Circumstances where there is no conflict of interest
- Processes for disclosing conflicts of interest for council members and senior officers

- Recording and filing of conflict of interest declarations
- How conflict of interest can affect quorum
- Authority of a senior officer to provide advice when they have a conflict of interest
- Other prohibitions related to conflict of interest (e.g., gifts, use of office for personal gain)
- Offences and penalties

**New provisions and Intent:**

No substantive changes have been made to the conflict of interest provisions brought forward in the new *Local Governance Act*.

**Part 9 – Financial Matters**

**Sections of the *Local Governance Act*: 99-105**

**Description:**

Part 9 sets out the powers and limitations a local government has with respect to financial matters.

Provisions in the *Municipalities Act* dealing with financial matters have been re-organized and reworded in the *Local Governance Act*. Other than the new provisions relating to economic development and annual reporting, substantial changes were not undertaken in this part.

The areas covered in Part 9 include:

- Fiscal year and budgets of local governments
- Borrowing powers
- Operating and capital reserve funds
- Grants for social or environmental purposes
- Adjustments for payments made under *Payments in Lieu of Taxes Act* (Canada)
- Economic development
- Annual report

**New Provisions and Intent:**

**Fiscal year and budgets of local governments**

Under the new *Act*, the Minister may fix a local tax rate for any local government that fails to submit their budget within the time prescribed by regulation. This new authority is intended to be a safeguard when a council refuses to fix a local tax rate, or is unable to as a result of a loss of quorum.

### **Borrowing Powers**

The *Municipalities Act* allowed local governments to borrow for their current operations up to 4% of their operating budget or \$5,000, whichever was greater. In the *Local Governance Act*, the \$5,000 has been increased to \$15,000.

### **Grants for Social and Environmental Purposes**

The conditions and limitations in the *Local Governance Act* for social and environmental purposes are similar to the provisions in the former *Municipalities Act*.

The authority of a local government to provide grants has, however, been expanded to include grants for encouraging economic development, which is addressed in a separate section.

### **Economic Development**

The new *Act* gives local governments the authority to establish by-laws respecting economic development, to the extent that the activity expands or maintains the local tax base. This can include:

- selling land at a price below market value;
- providing grants, or
- entering into agreements with other local governments, the Province, an individual or corporation, or a regional service commission.

While local governments are being granted this new authority, the *Act* does contain limitations. Specifically, a local government may not acquire or hold securities; provide loans or guarantees; or borrow money for the purpose of encouraging economic development. Furthermore, a local government cannot make a grant for economic development purposes that directly reduces or reimburses the taxes or utility charges paid or payable to the local government by the recipient of the grant.

### **Annual Report**

Local governments will now be required to prepare an annual report for the public. The details of the information required and the timeline for publication will be outlined in a new regulation and will include information on grants, economic development activities, and service provision. This new requirement extends to local government corporations. There is no requirement for local governments to submit their annual report to the



Province. However, annual reports will need to be posted on a local government's website and be available for examination by the public during regular working hours at the office of the clerk. Please note that financial reporting requirements to the Province remain the same.

## **Part 10 – Services in a Rural Community or Regional Municipality**

**Sections of the *Local Governance Act*:** 106-110

### **Description:**

Part 10 sets out provisions specific to services provided in a rural community or regional municipality. This includes services that can be prescribed by the Lieutenant-Governor in Council, the continuation of service provision by the Minister after incorporation, and the ability of the rural community or regional municipality to enact by-laws to provide a service previously provided by the Minister, or any other service.

### **New Provisions and Intent:**

This part of the *Act* was modernized. Provisions that were common to all local governments have been removed, leaving only the matters that are specific to the provision and financing of services in rural communities and regional municipalities.

## **Part 11 – Electricity, Gas, Water and Wastewater Services**

**Sections of the *Local Governance Act*:** 111-119

### **Description:**

Part 11 sets out the provisions regarding a local government's authority to generate electricity, sell gas or provide customer service in relation to the sale of gas, and provide water or wastewater disposal services.

The areas covered in this part are as follows:

- Definitions
- Generation of electricity
- Generation facility fund
- Budget for generation facility
- Reserve fund
- Borrowing for generation facility

- Water and wastewater disposal services
- Municipalities or commissions that provide electric power service
- Gas services

### **New Provisions and Intent:**

This part provides clarity and simplified language to the authority of local governments to provide electricity, gas, and water and wastewater services. There are some changes to this authority as follows:

### **Budget for generation facility**

Budgets for the operation of a generation facility must be balanced annually. This is a change from the authority to have *either* an annually balanced budget *or* a quadrennially balanced budget. However, the provisions to recover deficits or credit surpluses over a four-year period beginning in the second next ensuing year have been retained. In addition, while a local government may continue to transfer some or all of an audited surplus of the generation facility fund to other operating funds of the local government, it may be done only if there are no unfunded prior year deficits.

### **Water and wastewater disposal services**

Annual budgets for water and wastewater services must be balanced annually. This is a change from authority to have *either* an annually balanced budget *or* a quadrennially balanced budget. However, the provision to recover deficits or credit surpluses over a four-year period beginning in the second next ensuing year has been retained.

Wording regarding the charging of a portion of the water costs relating to fire protection services to property tax payers has been changed to reflect that the charge is to the general operating fund budget.

## **Part 12 – Local Improvements**

### **Sections of the *Local Governance Act*: 120-127**

#### **Description:**

Part 12 sets out the process a local government must follow in order to undertake a local improvement. A local improvement is a capital project that the council considers to be of greater benefit to an area of the local government than to the local government as a whole, and for which the costs are charged against the properties that receive the benefit.

The areas covered in Part 12 include:

- Definition of “owner”
- Local improvements
- Local improvement proposal
- By-law respecting a local improvement
- Notice of and opposition to a local improvement by-law
- Public hearing
- Requirements for a local improvement by-law
- Lien of the local government

### **New Provisions and Intent:**

This part has been significantly simplified with respect to process. It now contains eight sections compared to 32 in the previous legislation. Further, the capital works that can be undertaken have been expanded.

### **Local improvements**

A council may consider any capital work as a local improvement, providing that the local improvement is of greater benefit to an area within the local government than to the local government as a whole, and the costs of the improvement are to be charged only against those properties that receive the benefit of the improvement. Previously, the type of works that could be undertaken were specified in the *Act*.

It should be noted that there are no longer provisions for the establishment of local improvement associations. Any associations incorporated in the past under the authority of the *Municipalities Act* will continue, and the provisions of the *Municipalities Act* will continue to apply to them.

### **Local improvement proposal**

A council may make a by-law proposing a local improvement if it considers it necessary or beneficial for an area, or if it receives a petition from at least two-thirds of the owners of real property in an area that would benefit from the local improvement. With regards to a request from property owners, the previous legislation required that two-thirds of the property owners signing a petition have a property value of at least one-half of the total value of the properties for which the improvement was desired.

### **By-law respecting a local improvement**

A by-law respecting a local improvement must describe the local improvement and identify the area and the properties that will be affected. The by-law must also include a statement of the total cost of the improvement, how that cost is determined, the total cost to be applied against each property, and the mechanism for determining and

recovering those costs. Previously, the components of the total cost and the method of allocation were specified in the legislation.

### **Notice of and opposition to a local improvement by-law**

Notice of a proposed local improvement must be given to all the benefitting property owners who will be liable to pay the cost of the local improvement. Written objections can be filed within 30 days.

### **Public hearing**

If an objection is received, the council shall hold a public hearing. Notice of the hearing must be provided to the benefitting property owners at least 30 days prior to the date set for the hearing.

### **Requirements for a local improvement by-law**

A local improvement by-law requires two-thirds of the local government council voting in favour of it.

### **Lien of the local government**

The proportion of the total costs of a local improvement that is due and payable for a period of 60 days constitutes a special lien that holds priority over every claim, privilege, lien or encumbrance, and is not impaired by any neglect of the local government or if it was not registered.

## **Part 13 – Dangerous or Unsightly Premises**

### **Sections of the *Local Governance Act*: 128 – 143**

#### **Description:**

Sections 128 through 143 set out the provisions granting local governments authority to deal with dangerous and/or unsightly properties. Specifically, these provisions address the following matters:

- How and where the dangerous and unsightly premises provisions are to be applied
- Offences and associated penalties respecting dangerous and unsightly premises
- Notice requirements
- Appeal process
- Powers to clean, repair, or demolish properties
- Reports required for demolition
- Emergency situations

- Recovery of local government's costs, liens and debts paid by the Minister of Finance

### **New Provisions and Intent:**

With the exception of the matter of entering a dwelling for purposes of carrying out inspections, there are no substantive changes to the authority that local governments have specifically relating to the matter of dangerous and unsightly properties. However, changes have been made with respect to the wording and the order of some of the provisions.

It is important to note that the *Local Governance Act* now specifies that by-law enforcement officers conducting inspections for purposes of a local government's by-laws will only be allowed to enter a dwelling or dwelling unit upon obtaining consent from the occupant or obtaining an entry warrant under the *Entry Warrants Act*. (Refer to subsection 144(6) of the *Local Governance Act*.)

It should also be mentioned that the *Unsightly Premises Act* has been amended and will now only deal with salvage yards. A new regulation established under the new *Local Governance Act* addresses dangerous and unsightly premises in local service districts, and in those local governments that do not have a by-law dealing with this matter. Section 129 of the *Local Governance Act* specifies that in cases where a local government does not have a by-law dealing with dangerous or unsightly premises, the regulation made under paragraph 191(1)(ee) of the *Act* will apply.

## **Part 14 – Enforcement**

**Sections of the *Local Governance Act*: 144 - 160**

### **Description:**

Part 14 sets out the authority local governments have with respect to various aspects of by-law enforcement. Specifically, the provisions contained in these sections address the following matters:

- Inspections and entry onto premises
- Prohibitions and offences relating to inspections
- Offences and penalties
- Power of local governments to create offences and establish fines
- Proceedings and convictions
- Issuing of demands by by-law enforcement officers

- Court orders
- Evidence
- Administrative penalties and penalty notices

### **New Provisions and Intent:**

There are several new provisions and clarifications contained in Part 14. The most significant areas where adjustments to the legislation have been made are as follows:

#### **Entry onto properties**

Subsection 144(2) provides by-law enforcement officers with the authority to enter land, buildings or other structures at any reasonable time, for purposes of carrying out inspections (as required by by-law or the *Act*), as long as reasonable notice has been provided to the owner or occupier. In cases where a by-law enforcement officer wishes to enter a dwelling or dwelling unit (at a reasonable time) for purposes of carrying out an inspection, consent from the occupier or an entry warrant under the *Entry Warrants Act* must be obtained. The definitions of dwelling and dwelling unit are found in subsection 144(1).

In cases of emergencies or in extraordinary circumstances (refer to definition of “emergency” found in subsection 1(1) of the *Local Governance Act*), a by-law enforcement officer is not required to give notice prior to entering a premises and does not require the consent of the owner or occupier.

#### **Offences and Penalties**

The *Act* allows local governments to establish “a system of fines for offences under by-laws under the authority of this *Act*”. This could include different minimum and maximum fines for offences committed by individuals versus corporations. Furthermore, if these offences continue for more than one day, the local government may impose fines (per the by-laws) for each day the offences continue.

By-law violations can be classified as offences, which are punishable by fines and/or actions once an individual has been prosecuted and a conviction has been entered by a court. By-law violations can also be classified as ticketable offences, for which a municipal by-law enforcement officer can issue a ticket (administrative penalty notice), which contains a fine payable to the local government without court proceedings. In general, these types of tickets are issued for less serious offences, such as parking offences, while more serious offences must be prosecuted through the court system. A different type of ticket may also be issued for more serious matters, such as dangerous

or unsightly premises violations, under the *Provincial Offences and Procedures Act* (POPA”). This *Act* also houses offence categories and related fine ranges.

### **Administrative Penalties**

The most substantive change regarding enforcement relates to the authority of local governments to establish “administrative penalties”. The *Local Governance Act* now authorizes local governments to establish administrative penalties to be paid as a result of a contravention of a provision of a by-law. Such penalties can be established for all of a local government’s by-laws, with the exception of contraventions pertaining to speeding, firearms, dangerous and unsightly premises, and standards for maintenance and occupancy of buildings and premises. It should also be noted that administrative penalties can only be established for by-laws enacted under the authority of the *Local Governance Act*.

Administrative penalties, which would be levied through the issuance of “penalty notices”, are essentially tickets (like a parking ticket) that would be given to an individual or corporation as a result of a by-law infraction. Such a penalty notice may only be issued if the local government has a by-law in place that identifies the specific contraventions for which a penalty notice may be issued, identifies the amount of the penalty, and prescribes the time within which the penalty must be paid.

The amounts of the administrative penalties cannot exceed \$1,500 and, like offences, the amounts of such penalties can be different for individuals versus corporations. Local governments also have the authority to include in their by-law the possibility of a discount for early payment of the administrative penalty.

The form for the penalty notice (referred to as *Form 1 - Administrative Penalty Notice*) that a local government must use is being established by way of a regulation under the *Local Governance Act*.

Further details regarding the contents of penalty notices, the delivery and receipt of the penalty notices and payment of the administrative penalties are contained in sections 157 through 159. An individual or corporation charged with an offence under a local government’s by-law cannot be subject to an administrative penalty for the same infraction. However, if an individual or corporation fails to pay an administrative penalty, they may be charged with an offence.

## **Part 15 – Local Service Districts**

**Sections of the *Local Governance Act*: 161-176**

### **Description:**

Part 15 sets out the provisions respecting services provided in all local service districts (LSDs). In addition to some modernization of the legislation, this part includes new provisions.

The areas covered in Part 15 include:

- Services to be provided in all LSDs
- Prescribing services or discontinuing services
- Agreements with respect to the provision of services
- Operation of water or wastewater systems
- User charge calculated by frontage assessment
- Definition of “cost of work”
- Annexation or amalgamation of contiguous local service districts
- Changing the name of a local service district
- Elections of local service district advisory committees
- Term of office and election schedule for advisory committees
- Filling vacancies on a local service district advisory committee
- Financing of services in a local service district
- Estimate of money required for provision of services and tax rate
- Authorization for operating a retail business on the weekly day of rest
- Means of giving notice
- Court orders

### **New Provisions and Intent:**



In addition to the services that must be provided in all local service districts (animal control, fire protection, land use planning, police protection, solid waste collection and disposal) there are three new services that will be delivered in the LSDs:

1. Rescue services: This replaces the voluntary non-fire related rescue service which had been added to several LSDs already.
2. Emergency measures services: This does not replace the co-ordination efforts from the Department of Justice and Public Safety, but will allow a LSD to set up a warming centre, buy a generator for emergency purposes, or share the service delivery with neighbouring communities.
3. Dangerous or unsightly premises enforcement services: This is delivered by the Department of Environment and Local Government's regional environment offices. The *Act* also allows the involvement of the Regional Service Commission (RSCs) (if an RSC wishes to be involved in the delivery of this service in their region).

The new *Act* also allows for optional services to be provided to LSDs by Ministerial Order, as opposed to the approach under the former *Municipalities Act* of these services being specified in regulation.

For the service of solid waste collection and disposal, the sorting and packaging requirements will be prescribed by Ministerial Order as opposed to being specified in Regulation.

### **Prescribing services or discontinuing services**

The process for adding or discontinuing voluntary services has been modified. The LSD advisory committees may now make recommendations to the Minister which must be considered in the Minister's decision to add or discontinue a service. If there is no LSD advisory committee, a vote is to be called in the LSD, and the Minister must consider the results of the vote in his or her decision on the service, and the services will be added or discontinued by Ministerial Order.

### **Agreements with respect to the provision of services**

Subject to the *Regional Service Delivery Act*, the Minister may enter into agreements with any person with respect to the provision of a service.

### **Changing the name of a local service district**

A process has been established for changing the name of an LSD.

### **Term of office and election schedule for advisory committees**

The timelines for elections of new advisory committees have been modified to align them with a general municipal election.

### **Filling vacancies on a local service district advisory committee**

A procedure to follow is specified in the event that a vacancy is created on an advisory committee that brings the committee to less than three members. It also includes a stipulation that a person who resigns from an advisory committee is not eligible to be elected to the advisory committee in the next election.

### **Means of giving notice**

The ways in which people are notified in LSDs have been modernized.

## **Part 16 – Immunity and Indemnity**

**Sections of the *Local Governance Act*:** Sections 177 - 179

### **Description:**

Part 16 sets out immunity and indemnity provisions with respect to nuisance actions and provisions related to fire protection and rescue services in both local governments and local service districts.

The sections in the *Act* are:

- Immunity from liability in nuisance
- Immunity - fire protection services and rescue services
- Indemnity - fire protection services in LSDs

**New Provisions and Intent:** Provisions in the *Local Governance Act* have been clarified and simplified, and immunity for liability in nuisance has been expanded.

### **Immunity for liability in nuisance**

Immunity is expanded to include water systems. “Wastewater” systems has replaced reference to “sewer” systems.

### **Immunity – fire protection services and rescue services**

Immunity from the actions of a member of a fire department or a former member of a fire department has been expanded to include actions of a member carrying out a public function. As well, reference to ‘non-fire related rescue services’ has been changed to ‘rescue services’.

## **Part 17 – Miscellaneous and General**

**Sections of the *Local Governance Act*:** Sections 180-191

**Description:**

Part 17 provides further direction regarding powers of local governments, itemizes the regulation-making authority of the Lieutenant-Governor in Council regarding local governments and local service districts, and assigns the responsibility for the administration of the *Act* to the Minister.

The sections in Part 17 are:

- Power of local government to bring an action
- Notice requirement for action for damages for personal injury
- Title to roads, streets and highways
- Power to remove obstructions
- Power to expropriate
- Operation of water or wastewater systems – specific case
- Fire protection by-laws and enforcement
- Joint housing projects
- Regulations relating to pensions
- Provisions respecting rural communities to be applied to regional municipalities
- Administration
- Review of the *Act*
- Regulations

**New Provisions and Intent:**

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**Notice requirement for Action for damages for personal injury**

This new provision sets the time period within which a person who intends to bring an action against the local government for personal injury must notify the clerk. They must do so within 90 days after the occurrence of the event. Exceptions are provided to a person who does not notify the clerk within that time period for specific reasons, such as: a reasonable excuse for not providing the prescribed notice providing the local government is not prejudiced by the lack of action, death of the person as a result of the event under complaint, lack of physical or mental capacity of the claimant, or if the local government waives the notice requirement.

**Power to remove obstructions**

The definition of 'street' has been expanded to include a public highway.

**Fire protection by-laws and enforcement**

This section has been rewritten in a less prescriptive manner in recognition of the broader powers being provided to local governments.

### **Joint Housing Projects**

Given the broader powers being accorded to local governments in the *Local Governance Act*, the role of the Lieutenant-Governor in Council has been removed.

### **Regulations relating to pensions**

This section outlines the Lieutenant-Governor in Council's regulation-making ability with respect to a uniform contributory pension plan. It also specifies that the new *Act* does not affect the continued operation of a pension plan or a superannuation plan established by a local government under section 162 of the *Municipalities Act*, the *Municipal Employees Pensions Act*, or any other *Act*.

### **Review of this Act**

This section prescribes that within seven years of the commencement of the *Act*, the Minister must undertake a review, and must submit a report to the Legislative Assembly.

### **Regulations**

This section (191) gives the Lieutenant-Governor in Council the authority to make regulations specific to the administration of local governments and LSDs, and consolidates all of the regulation-making authorities under one section, with some changes.

Authority is also provided for these regulations to vary in respect of different persons, matters or things; or different classes or categories of persons, matters or things; to be general or particular in their application; to be limited as to time and/or place, and to exclude any place from their application. Additional regulation-making authority and amendments to previously existing regulations have been provided as follows:

- Code of Conduct for members of council
- Prescribing powers and duties of a by-law enforcement officer
- Setting the time for submitting annual reports and prescribing information to be included in annual reports
- Governing the provision of animal control services in rural communities, regional municipalities, and LSDs
- Dangerous or unsightly premises and properties
- Administrative Penalty notice and prescribing information to be included in a penalty notice form
- Defining words or expressions used in this *Act* but not defined
- Prescribing forms to be used for the purposes of this *Act*

- Repealing, in whole or in part, a regulation referred to in section 196

## **New or Amended Regulations:**

### **Code of Conduct Regulation**

Subsection 10(2)(b) of the *Act* provides that a council shall make by-laws establishing the code of conduct for members of council.

### **Prescribing powers and duties of a by-law enforcement officer**

Section 80 of the *Act* provides that if a council has appointed a by-law enforcement officer under section 72 of the *Act*, the officer will have the powers and duties prescribed by the regulations under the *Act*, as well as those required by by-law, this *Act*, and any other *Act*.

### **Setting the time for submitting annual reports and prescribing information to be included in annual reports**

Subsections 105(1) and 105(2) of the *Act* require that local governments must prepare an annual report with required information before a designated date, as prescribed by regulation.

### **Governing the provision of animal control services in rural communities, regional municipalities, and LSDs**

The former Provincial Dog Regulation 84-85 under the *Municipalities Act* will be replaced by the Provincial Animal Regulation under the *Local Governance Act*, which will apply to animals in all LSDs and in those rural communities without an animal control by-law.

### **Dangerous or unsightly premises and properties**

Section 128 to section 143 provides the authority and processes for local governments to manage dangerous or unsightly premises. A new regulation under the *Local Governance Act* will now address dangerous and unsightly premises in local service districts, and in local governments that do not have a by-law in place dealing with this matter. The *Unsightly Premises Act* will continue to be in force regulating some aspects of salvage yards (e.g., location requirements) throughout the province, including any located within a local government.

### **Administrative penalty notice**

Subsection 157 of the *Act* provides authorities and processes to local governments to issue administrative penalty notices, in accordance with the form and information as prescribed by regulation.

### **Defining words or expressions used in this Act but not defined**

Regulation(s) may be made to provide definitions if considered necessary.

### **Prescribing Forms**

Forms may be prescribed by regulations for the purposes of the *Act*.

### **Repealing in whole or in part regulations made under the *Municipalities Act***

The regulations referred to in section 196 of the *Act* will continue to be in force, until either repealed by a regulation or regulations under the authority of the *Act*.

## **Part 18 – Transitional and Saving Provisions and Repeal and Commencement**

**Sections of the *Local Governance Act*:** Sections 192-203

### **Description:**

Part 18 provides transitional provisions from the *Municipalities Act* to the *Local Governance Act*, provisions to repeal the *Municipalities Act* and sections of the *Unsightly Premises Act*, and commencement provisions for the *Local Governance Act*.

The areas covered in this part include:

- Existing local governments continue under this *Act*
- Territorial limits of local governments remain unchanged
- Wards remain unchanged
- By-laws under the *Municipalities Act*
- Regulations under the *Municipalities Act*
- By-laws respecting pension or superannuation plans made under the *Municipalities Act*
- Continuation of four-year balanced budgets
- Continuation of existing bodies corporate
- Continuation of local improvement associations
- Continuation of appointment of officers
- Permits deemed to be issued under the *Local Governance Act*
- Transitional terms of office for members of advisory committees
- Repeal of the *Municipalities Act*
- Repeal of New Brunswick Regulation 95-110 under the *Municipalities Act*
- Amendments to the *Unsightly Premises Act*
- Commencement

## **Provisions in Part 18:**

### **Existing local governments continue under this Act**

Any municipality, rural community or regional municipality in existence prior to the coming into force of this section remains, and the residents continue to be bodies corporate.

### **Territorial limits of local governments remain unchanged**

The geographic boundaries of any municipalities, rural communities or regional municipalities that were in existence prior to the coming into force of section 193 remain the same, until changed in accordance with this *Act*, or any other *Act*.

### **Wards remain unchanged**

Any electoral wards in place in a municipality, rural community or regional municipality that were in existence prior to the coming in force of the *Local Governance Act*, stay the same until the local government changes its by-law.

### **By-laws under the *Municipalities Act***

Any by-law that was in force under the authority of the *Municipalities Act* is valid and is considered to have been made under the authority of the *Local Governance Act* and is in force until such time as it is amended or repealed.

### **Regulations under the *Municipalities Act***

The following regulations made under the *Municipalities Act*, chapter M-22 of the Revised Statutes, 1973, will remain in force until repealed or replaced:

- . *Provincial Exhibitions and Concerts Regulation 81-114,*
- . *Disclosure of Interest Form Regulation 81-150,*
- . *Water Costs for Fire Protection Regulation 81-195,*
- . *Municipal Budgets Regulation 82-84,*
- . *Provincial Dog Regulation 84-85,*
- . *Residential Properties Maintenance and Occupancy Code Approval Regulation 84-86,*
- . *Local Service Districts Regulation 84-168,*
- . *Municipalities Regulation 85-6,*
- . *Terms and Conditions for Payment of User-Charges Regulation 88-193,*
- . *Blasting Code Approval Regulation 89-108,*
- . *Rural Community of Beaubassin East Regulation 95-36,*
- . *Reserve Fund Regulation 97-145,*
- . *Oath of Office Regulation 2001-40,*
- . *Garbage Collection Regulation 2002-59,*

- . *Procedural By-Law Regulation 2004-25,*
- . *Rural Community Administration Regulation 2005-94,*
- . *Rural Community Incorporation and Restructuring Regulation 2005-95,*
- . *Municipal Incorporation and Restructuring Regulation 2005-96,*
- . *Rural Community Services Regulation 2005-97,*
- . *Shared Service Agreement Regulation 2005-98,*
- . *Rural Community of Saint-André Regulation 2006-34,*
- . *Land Registry Forms Regulation 2007-22,*
- . *Rural Community of Upper Miramichi Regulation 2008-37,*
- . *Shared Generation Facility Agreement Regulation 2010-4,*
- . *Uniform Contributory Pension Plan Regulation 2010-23,*
- . *Rural Community of Campobello Regulation 2010-138,*
- . *Rural Community of Kedgwick Regulation 2012-18,*
- . *Rural Community of Hanwell Regulation 2014-30,*
- . *Regional Municipality of Grand Tracadie-Sheila Regulation 2014-34,*
- . *Rural Community of Cocagne Regulation 2014-43;*
- . *Rural Community of Haut-Madawaska Regulation 2017-3*

### **By-laws respecting pension or superannuation plans made under the *Municipalities Act***

A new by-law to replace a by-law made previously under the authority of 162(1) of the *Municipalities Act* is not needed in order for pension or superannuation plans to continue. The existing by-law may be amended under the authority of section 162 of the *Municipalities Act*, as if that subsection had not been repealed.

### **Continuation of four-year balanced budgets**

If a local government has produced a four-year balanced budget for either a generation facility or a water or sanitary sewerage system under the authority of paragraph 111.4(2)(b) or paragraph 189(4)(b), respectively of the *Municipalities Act* prior to the commencement of section 198 of the *Local Governance Act*, that authority will continue, until the end of that four-year budget period.

### **Continuation of existing bodies corporate**

A corporation that was incorporated before the commencement of section 199 for the purpose of carrying on business for or on behalf of a municipality, rural community or regional municipality may continue.

### **Continuation of local improvement association**



Local improvement associations in existence before the commencement of this section continue as corporations with the same authorities, roles and responsibilities held under the former *Municipalities Act*. There is no authority under the *Local Governance Act* to incorporate new local improvement associations.

#### **Continuation of appointment of officers**

A chief administrative officer, clerk, treasurer, auditor, assistant clerk, assistant treasurer, engineer, building inspector, solicitor and such other officers who were appointed under section 74 of the *Municipalities Act*, or a by-law enforcement officer appointed under subsection 14(1) of the *Police Act*, who were appointed before the commencement of section 201, continue to hold those offices and shall be considered to be appointed under section 71 or section 72 respectively, of the *Local Governance Act*.

#### **Permits deemed to be issued under the *Local Governance Act***

A permit that was issued to a retail business allowing it to operate on the weekly day of rest prior to the commencement of section 202 continues to be valid.

#### **Transitional terms of office for members of advisory committees**

Members of existing local service district advisory committees shall continue as members and be considered to be elected under section 169 of the *Local Governance Act*. The term of members of existing advisory committees will end on May 31, 2020. There will be no elections of advisory committees during 2019, unless it is for a **new** local service district advisory committee. The Minister shall call meetings between January 1, 2020 and May 31, 2020 in local service districts to elect advisory committee members where there are existing advisory committees, and their terms of office will begin on June 1, 2020. If a new advisory committee has been elected in the year previous to May 31, 2020, no election will be held until the next general election held after May 2020 and the members will continue until that event.

#### **Repeal of the *Municipalities Act***

The *Municipalities Act*, chapter M-22 of the Revised Statutes, 1973, is repealed.

#### **Repeal of *New Brunswick Regulation 95-110* under the *Municipalities Act***

This Regulation, cited as the *Maximum Fee Regulation – Municipalities Act*, is repealed.

#### **Amendments to the *Unsightly Premises Act***

The *Unsightly Premises Act* has been amended and now only deals with the matter of salvage yards. It will continue to be administered by the Minister and will continue to apply to salvage and salvage yards. The parameters of establishing, maintaining, operating and location of salvage yards, the appointment of inspectors by the Minister

and their powers, interference with those inspectors, violations, offences and penalties for contravention, all continue in the *Unsightly Premises Act*.

Part 13 of the *Local Governance Act* details the by-law-making authorities of local governments regarding dangerous or unsightly premises. Paragraph 191(1)(ee) details the regulation-making authority for these matters in LSDs and in those local governments that have not adopted a by-law.

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