

# The Community Charter

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**F u l t o n   &   C o m p a n y**

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AUTHORED BY:

**Brian D. Ross**

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## **SPECIFIC TOPICS:**

**FUNDAMENTAL POWERS**

**LOCAL SERVICES**

**ROADS AND PARKLAND**

**MISCELLANEOUS**

## MUNICIPAL PURPOSES AND POWERS – PART 2

### FUNDAMENTAL POWERS – SECTION 8

The Community Charter in Section 8(1) gives a municipality the “capacity, rights, powers and privileges of a natural person of full capacity”. In other words, everything you can do, a municipality can do, e.g.: buy and sell assets, make agreements, generally run the business of the municipality. This general power replaces the old section 176 of the *Local Government Act* as well as many specific empowering sections.

The municipality can now “provide any service that the council considers necessary or desirable” (s. 8(2)). There are no limits to this power so long as the service is not already reserved to a superior government.

Section 8(3) gives council the power by bylaw to “regulate, prohibit, and impose requirements” for thirteen separate areas e.g.: services, building, public health.

“Regulate” now means – includes authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated.

The broader definition of “regulate” and the ability to “impose requirements” greatly expands council’s legislative authority in these areas.

Section 8(4) – can regulate and impose requirements for signs;

Section 8(5) – can regulate and prohibit discharge of firearms;

Section 8(6) – can regulate in relation to business;

Section 8(9) – council must give reasons for above bylaws.

### SPHERES OF CONCURRENT AUTHORITY – SECTION 9

Council may not adopt a bylaw dealing with:

- (a) public health;
- (b) protection of the natural environment;
- (c) wildlife;



- (d) buildings and other structures;
- (e) removal and deposit of soil and other material;

unless it is:

- (i) in accordance with regulation;
- (ii) in accordance with agreement with responsible ministry;
- (iii) approved by the minister responsible.

If the power to pass a bylaw in the five noted areas comes from a source other than Section 8, then this Section 9 does not apply.

May be useful to pass bylaw before Community Charter comes into force as they will be grandfathered

## **PART 2— MUNICIPAL PURPOSES AND POWERS**

### **Division 1— Purposes and Fundamental Powers**

#### **Municipalities and their councils**

- 6
- (1) A municipality is a corporation of the residents of its area.
  - (2) The governing body of a municipality is its council.
  - (3) New municipalities may be established, and the boundaries of existing municipalities may be altered, in accordance with Part 2 [*incorporation*] of the *Local Government Act*.

#### **Municipal purposes**

- 7
- The purposes of a municipality include
- (a) providing for good government of its community,
  - (b) providing for services, laws and other matters for community benefit,
  - (c) providing for stewardship of the public assets of its community, and
  - (d) fostering the economic, social and environmental well-being of its community.

#### **Fundamental powers**

- 8
- (1) A municipality has the capacity, rights, powers and privileges of a natural person of full capacity.
  - (2) A municipality may provide any service that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.
  - (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:
    - (a) municipal services;
    - (b) public places;

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- (c) trees;
  - (d) firecrackers, fireworks and explosives;
  - (e) bows and arrows, knives and other weapons not referred to in subsection (5);
  - (f) cemeteries, crematoriums, columbariums and mausoleums and the interment or other disposition of the dead;
  - (g) the health, safety or protection of persons or property in relation to matters referred to in section 63 [*protection of persons and property*];
  - (h) the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [*nuisances, disturbances and other objectionable situations*];
  - (i) public health;
  - (j) protection of the natural environment;
  - (k) animals;
  - (l) buildings and other structures;
  - (m) the removal of soil and the deposit of soil or other material.
- (4) A council may, by bylaw, regulate and impose requirements in relation to matters referred to in section 65 [*signs and other advertising*].
  - (5) A council may, by bylaw, regulate and prohibit in relation to the discharge of firearms.
  - (6) A council may, by bylaw, regulate in relation to business.
  - (7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter
    - (a) are separate powers that may be exercised independently of one another,
    - (b) include the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter, and

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- (c) may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*.
- (8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:
  - (a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;
  - (b) to prohibit persons from doing things with their property;
  - (c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.
- (9) A municipality must make available to the public, on request, a statement respecting the council's reasons for adopting a bylaw under subsection (3), (4), (5) or (6).
- (10) Powers provided to municipalities under this section
  - (a) are subject to any specific conditions and restrictions established by or under this or another Act, and
  - (b) must be exercised in accordance with this Act unless otherwise provided.
- (11) For certainty,
  - (a) the authority under subsection (2) does not include the authority to regulate, prohibit or impose requirements, and
  - (b) for the purposes of subsection (3) (a), a service does not include an activity that is merely the exercise of authority to regulate, prohibit or impose requirements and related enforcement.

**Spheres of concurrent authority**

- 9 (1) This section applies in relation to the following:
- (a) bylaws under section 8 (3) (i) [*public health*];
  - (b) bylaws under section 8 (3) (j) [*protection of the natural environment*];
  - (c) bylaws under section 8 (3) (k) [*animals*] in relation to wildlife;
  - (d) bylaws under section 8 (3) (1) [*buildings and other structures*] establishing standards that are or could be dealt with by the Provincial building regulations;

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- (e) bylaws under section 8 (3) (m) [*removal and deposit of soil and other material*] that
  - (i) prohibit soil removal, or
  - (ii) prohibit the deposit of soil or other material, making reference to quality of the soil or material or to contamination.
  
- (2) For certainty, this section does not apply to
  - (a) a bylaw under section 8 [*fundamental powers*] that is under a provision not referred to in subsection (1) or is in respect of a matter to which subsection (1) does not apply,
  - (b) a bylaw that is authorized by or under a provision of this Act other than section 8, or
  - (c) a bylaw that is authorized by or under another Act,even if the bylaw could have been made under an authority to which this section does apply.
  
- (3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is
  - (a) in accordance with a regulation under subsection (4),
  - (b) in accordance with an agreement under subsection (5), or
  - (c) approved by the minister responsible.
  
- (4) The minister responsible may, by regulation, do the following:
  - (a) establish matters in relation to which municipalities may exercise authority as contemplated by subsection (3) (a), either
    - (i) by specifying the matters in relation to which they may exercise authority, or
    - (ii) by providing that the restriction under subsection (3) only applies in relation to specified matters;
  - (b) provide that the exercise of that authority is subject to the restrictions and conditions established by the regulation;

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- (c) provide that the exercise of that authority may be made subject to restrictions and conditions specified by the minister responsible or by a person designated by name or title in the regulation.
- (5) The minister responsible may enter into an agreement with one or more municipalities that has the same effect in relation to the municipalities as a regulation that could be made under subsection (4).
- (6) If
  - (a) a regulation or agreement under this section is amended or repealed, and
  - (b) the effect of the amendment or repeal is that bylaws that previously did not require authorization under subsection (3) would now require that authorization,those bylaws affected that were validly in force at the time of the amendment or repeal continue in force as if they had been approved by that minister.



**MUNICIPAL REVENUE - PART 7**

**LOCAL SERVICES TAXES – DIVISION 5**

**Definitions:**

“Service” means, in relation to a municipality, an activity, work or facility undertaken or provided by or on behalf of the municipality;

“Local Service Area” means the area in which a local service tax is imposed.

**Qualification:**

The only services that can be provided are services that council considers provide particular benefit to part of the municipality or business improvement area services (s. 210(2)).

**Three Ways to Initiate a Local Service:**

1. Petition from affected property owners (s. 212);
2. Council initiative negative petition available (s. 213);
3. Council initiative with elector consent (s. 214).

**Similarities:**

All require notice either on owner’s petition or on Council’s two types of initiatives of:

- (a) describe the service;
- (b) define boundaries of local service area;
- (c) estimate of costs;
- (d) amount to be borrowed and part recovered by local service tax;
- (e) form and method of local service tax;
- (f) portion of cost, if any, paid by general revenue.



**Differences:**

1. Petition by affected owners
  - requires 50% of owners representing at least 50% of assessed value of land and buildings;
  - notice must be on each page of petition.
2. Council initiative
  - must give public notice (s. 94);
  - also notice to owner affected;
  - from date of second publication, dissenters have 30 days to present petition against the initiative (need 50% of owners representing 50% of value);
  - if negative petition presented Council cannot put forward the same initiative for one year.
3. Council initiative with electors assent
  - here the Council essentially conducts a referendum with affected property owners and proceeds only if bylaw is assented to by a majority of electors in the local service area;
  - this method not available for services to business improvement area.

Local Service Areas can be enlarged, reduced or amalgamated (Sections 218 and 219).

**Note: The “Must” Factor.**

**Imposing the Local Service Tax:**

Need a separate bylaw to impose the tax on the local service area and tax may be collected by either one of or a combination of:

- (a) property value tax on land or improvement or both;
- (b) parcel tax.

(Section 216)



**Parcel Value Tax** (Sections 197 to 199)

This is the normal general revenue assessment for property taxes each year, however, you can now use this method to apply a separate property value tax to the land parcels located in the local service area for the annual amortized cost of the local service.

**Parcel Tax** (Sections 200 to 209)

A parcel tax may be imposed on the basis of one or more of:

- (a) a single amount for each parcel;
- (b) the taxable area of the parcel;
- (c) the taxable frontage of the parcel.

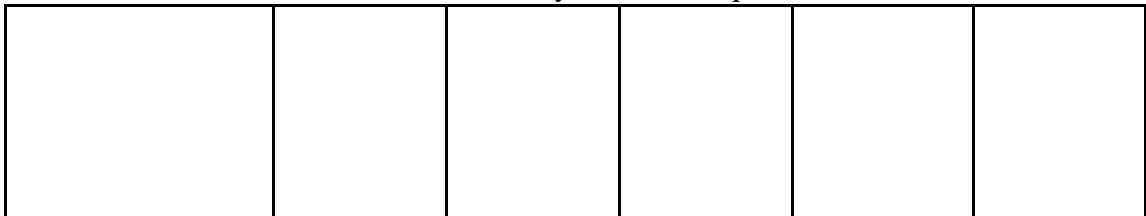
For (b) and (c) a method of determining the area and frontage is to be established and may take into account the physical characteristics of the land.

These methods of imposing the tax allow much more flexibility to achieve fairness in the process to all property owners no matter what the characteristics of their land.

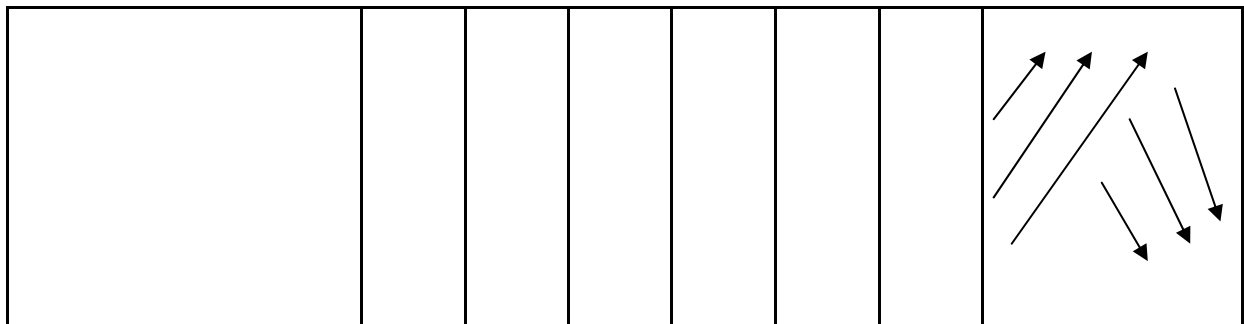
Ability to allow taxes to be commuted is available but is not obligatory.

Examples:

What was needed for old system to be equitable:



New system can accommodate a varied landscape:



### Division 5— Local Service Taxes

#### Authority for local area services

- 210 (1) A local area service is a municipal service that is to be paid for in whole or in part by a local service tax under section 216 [*local service taxes*].
- (2) The only services that may be provided as local area services are
- (a) services that the council considers provide particular benefit to part of the municipality, and
  - (b) business improvement area services under section 215 [*business improvement areas*].
- (3) Nothing in this Division restricts a municipality from recovering part of the costs of a local area service by means of any other source of municipal revenue.

#### Requirements for establishing a local area service

- 211 (1) A municipality must adopt a bylaw to establish a local area service, and may only do this if
- (a) the service and its cost recovery methods have been proposed by petition in accordance with section 212 [*petition for local area service*],
  - (b) the service and its cost recovery methods have been proposed by council initiative in accordance with section 213 [*local area service on council initiative –subject to petition against*], or
  - (c) the bylaw has received assent of the electors in accordance with section 214 [*local area service on council initiative –subject to elector assent*].
- (2) The bylaw establishing a local area service must
- (a) describe the service,
  - (b) define the boundaries of the local service area,
  - (c) identify the methods of cost recovery for the service, including the form of local service tax and the portion of the costs of the service that are to be recovered by the local service tax, and
  - (d) if applicable, identify the portion of the costs of the service that are to be recovered by a general property tax.

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- (3) If the minister exercises authority under section 137 (2) [*power to amend or repeal bylaws*] in relation to a bylaw establishing a local area service, the restriction in subsection (1) of this section does not apply.

**Petition for local area service**

- 212 (1) The persons who may petition for a local area service are the owners of parcels that would be subject to the local service tax for the service.
- (2) Each page of a petition for a local area service must do the following:
- (a) describe the service in general terms;
  - (b) define the boundaries of the local service area;
  - (c) provide an estimate of the costs of the service;
  - (d) if it is proposed that the municipality borrow for the purposes of the service and all or part of the costs of the borrowing are to be recovered by means of the local service tax, indicate
    - (i) the total amount proposed to be borrowed under the bylaw,
    - (ii) the maximum term for which the debentures may be issued, and
    - (iii) the portion of those costs that are to be recovered by a local service tax;
  - (e) indicate the proposed methods of cost recovery for the service, including the form of local service tax and the portion of the costs of the service that are to be recovered by the local service tax;
  - (f) if applicable, indicate what portion of the costs are proposed to be recovered by a general municipal tax;
  - (g) include any other information that council requires.
- (3) In order for a petition for a local area service to be certified as sufficient and valid,
- (a) the petition must be signed by the owners of at least 50% of the parcels that would be subject to the local service tax, and
  - (b) the persons signing must be the owners of parcels that in total represent at least 50% of the assessed value of land and improvements that would be subject to the local service tax.

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- (4) The corporate officer must determine the sufficiency and validity of a petition to a council and must certify this determination.
- (5) A certified determination under subsection (4) is final and conclusive.
- (6) The following apply for the purposes of a petition under this section:
  - (a) if 2 or more persons are owners of a parcel,
    - (i) they must be considered as one owner only,
    - (ii) they are not entitled to petition unless a majority of them concurs, and
    - (iii) unless a petition is signed by a majority of them, their signatures must be disregarded in determining whether the petition is sufficient;
  - (b) a person who would be liable for a local service tax by reason of being the holder or occupier of land held in the manner referred to in Division 8 [*Tax Liability of Occupiers*] of this Part may sign the petition as if the person were the owner;
  - (c) in relation to persons referred to in paragraph (b), in computing the values of the land and improvements, only the assessed value of the person's interest in them is to be used.

**Local area service on council initiative – subject to petition against**

213 (1) If a council proposes to undertake a local area service on its own initiative in accordance with this section, it must give notice of this intention

- (a) in accordance with section 94 [*public notice*], and
- (b) to the owners of parcels that would be subject to the local service tax.

(2) The notice under subsection (1) must include

- (a) the information required under section 212 (2) [*information requirements for petition*],
- (b) if the council is proposing that all or part of the costs may be waived or reduced in accordance with section 201(3) [*property subject to parcel tax*], the amount that the property owner will be required to pay for this purpose, and

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(c) a statement indicating that the council may proceed with establishing the service unless a petition against the service is presented within 30 days after notice has been given in accordance with this section.

(3) For the purposes of subsection (1) (b), the corporate officer must mail the notice to the applicable address as set out in the last authenticated assessment roll.

(4) Council may proceed with the local area service in accordance with the notice unless it receives a sufficient petition against the service within 30 days after the second publication under subsection (1) (a).

(5) Section 212 (3) to (6) [*rules respecting petitions for local service*] applies to a petition under this section.

(6) If a council has been prevented from undertaking a local area service because of a petition under this section, the council must not propose the same service on its own initiative within a period of one year after the presentation of the petition.

(7) As an exception to subsection (6), a council may again propose a local area service on its own initiative within the period referred to in that subsection if the service is varied from or less expensive than that originally proposed to be undertaken.

**Local area service on council initiative – subject to elector assent**

214 (1) If a council proposes to undertake a local area service on its own initiative in accordance with this section, the bylaw establishing the service may only be adopted with the assent of the electors in the local service area.

(2) As an exception, a council may not undertake a business improvement area service under this section.

**Business improvement areas**

215 (1) In this section:

"business improvement area" means the local service area for a service under this section;

"business improvement area service" means the provision of grants under subsection (2);

"business promotion scheme" means

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- (a) carrying out studies or making reports respecting one or more areas in the municipality where business or commerce is carried on,
  - (b) improving, beautifying or maintaining streets, sidewalks or municipally owned land, buildings or structures in one or more business improvement areas,
  - (c) the removal of graffiti from buildings and other structures in one or more business improvement areas,
  - (d) conserving heritage property in one or more business improvement areas, and
  - (e) encouraging business in one or more business improvement areas.
- (2) A council may grant money to a corporation or other organization that has, as one of its aims, functions or purposes, the planning and implementation of a business promotion scheme.
- (3) All or part of a grant paid under subsection (2) must be recovered by means of a local service tax.
- (4) The authority under subsection (2) is an exception to section 25 (1) [*prohibition against assistance to business*].
- (5) In addition to the requirements under section 211(2) [*requirements for establishing a local area service*], the bylaw establishing a business improvement area service
- (a) must identify the business promotion scheme for which and the organization to which the money will be granted under subsection (2),
  - (b) must establish the maximum amount of money to be granted and the maximum term over which it may be granted, and
  - (c) may set conditions and limitations on the receipt and expenditure of the money.
- (6) Money granted under this section must be expended only
- (a) by the organization to which it is granted,
  - (b) in accordance with the conditions and limitations set out in the bylaw, and
  - (c) for the business promotion scheme described in the bylaw.

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**Local service taxes**

- 216 (1) In all cases, all or part of the costs of a local area service may be recovered, in accordance with the establishing bylaw for the service, by means of either or both of
- (a) a property value tax under Division 3 of this Part, which may be imposed on land, on improvements, or on both, and
  - (b) a parcel tax under Division 4 of this Part,
- that are imposed only within the local service area.
- (2) In the case of a business improvement area service, in addition to the taxes referred to in subsection (1), all or part of the costs of the service may be recovered by means of a tax, based on any factor set out in the establishing bylaw, that is imposed only within the business improvement area.
- (3) A local service tax under subsection (1) or (2) in relation to a business improvement area
- (a) may only be imposed on land or improvements, or both, that are
    - (i) used during the year to operate a business of a class specified in the bylaw, or
    - (ii) classified as Class 5 [*light industry*] or 6 [*business and other*] property class, and
  - (b) may have different rates for different classes of business, as those classes are established by the bylaw.
- (4) Subject to this section, the other provisions of this Part apply in respect of a local service tax.
- (5) Revenue from a local service tax may only be expended for the local area service in relation to which it is imposed.

**Borrowing in relation to a local area service**

- 217 (1) If all of the costs of borrowing for the purposes of a local area service are to be recovered by a local service tax, the loan authorization bylaw does not require the approval of the electors under section 180 [*elector approval required for some loan authorization bylaws*], but it may only be adopted if

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- (a) the borrowing has been proposed by petition in accordance with section 212 [*petition for local area service*],
  - (b) the borrowing has been proposed by council initiative in accordance with section 213 [*local area service on council initiative –subject to petition against*], or
  - (c) the bylaw has received assent of the electors in accordance with section 214 [*local area service on council initiative –subject to elector assent*].
- (2) If part of the costs of borrowing for the purposes of a local area service are to be recovered by a local service tax,
- (a) a separate loan authorization bylaw is required for the borrowing in relation to which costs are to be recovered by the local service tax, with the bylaw adopted in accordance with subsection (1), and
  - (b) a separate loan authorization bylaw is required for the borrowing in relation to which costs are to be recovered by any other means, with the bylaw adopted in accordance with Part 6 [*Financial Management*].

**Enlargement or reduction of local service area**

- 218 (1) This section applies to the amendment of the bylaw establishing a local area service that has the effect of enlarging or reducing the size of the local service area.
- (2) The requirements under section 211 (1) [*requirements for establishing a local area service*] apply only in relation to the area to be included or excluded from the local service area and not to the rest of the local service area.
- (3) If a local service area has been enlarged or reduced under this section, the liabilities incurred on behalf of the area as it was before enlargement or reduction must be borne by all the owners of parcels of land in the area as enlarged or reduced.

**Merging of local service areas**

- 219 (1) A council may, by bylaw, merge 2 or more local service areas into one local service area.
- (2) A bylaw under subsection (1) may provide that repayment of any debt of one or more of the merged local service areas that is outstanding at the time of merger is to continue to be borne by the applicable former local service area as if that area continued to exist.

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- (3) Section 211 (1) [*requirements for establishing a local area service*] does not apply to the bylaw under subsection (1) of this section if
- (a) there is no outstanding debt of any of the local service areas being merged,
  - (b) the outstanding debt of each of those local service areas is kept separate under subsection (2), or
  - (c) the bylaw establishing the service currently includes a provision for merger with one or more other local service areas and the merger is in accordance with the provision.
- (4) If section 211(1) applies to a bylaw under this section, the approval of the electors must be obtained separately for each local service area being merged.

## ROADS AND PARKLAND

The Community Charter will transfer title in most roads and in most parks to the municipality.

### **Roads:**

The soil and freehold of every highway in a municipality is vested in the municipality (s. 35)

- exceptions:    -    arterial highways and interchanges;
- highways associated with provincial parks, etc.;

All easements and rights of way solely for drainage of a highway also vest in the municipality. The Province may resume parts of the roads by order-in-council for arterial highways, a transportation purpose or provincial park.

### **Road Powers:**

A council may grant a licence of occupation or an easement, or permit an encroachment, in respect of a vested highway (s. 35(11)).

A council may, by bylaw, regulate and prohibit in relation to all uses of highways. These powers are subject to the *Motor Vehicle Act* (traffic and parking), provincial jurisdiction over arterial highways and the *Utilities Commission Act* for all electrical transmissions (s. 36).

A council may close and re-open highways at will.

To remove the dedication of a highway the municipality must:

- (a)    give public notice as outlined in Section 94;
- (b)    provide an opportunity for affected persons to address council;
- (c)    give direct notice to affected utilities.

Having done the foregoing then the road closure bylaw can be adopted and must be filed in the Land Title Office with a survey plan. Title to the closed road will be raised in the name of the municipality (s. 40).



Road closure powers include public highways created by Section 4 of the *Highway Act*.

Restrictions on road closures include:

- (a) if access to water is closed it must be either exchanged with access of equal benefit or reserve fund set up with proceeds to acquire replacement access;
- (b) if a highway closure or alteration deprives a parcel of land of access then it cannot be done unless owner agrees or owners receive both compensation for injurious affection and new access;
- (c) if within 800 meters of arterial highway the consent of the Ministry of Transportation needed;
- (d) utility companies may require reasonable protection for their works, e.g.: right of way.

Note: no need for highway exchanges

Other continuing powers include: temporarily restrict traffic, naming, numbering, compensation for extraordinary traffic, access to utility poles, covenant to reserve land for highway, right to seize chattels.

### **Parks:**

Where land has been dedicated as a park by a surveyor's plan then the park vests in the municipality (s. 29).

This would not include parkland granted from the provincial government or other and subject to a condition limiting use to park.

### **Park Powers:**

The municipality has the ability to dispose of park in exchange for new park and may dispose of park outright if the proceeds of disposition go into a reserve fund for parks (s. 27).

The disposition in both cases must be by bylaw with the approval of the electors.

Approval of the electors is either:

- (a) assent of electors (majority vote on a referendum) or;
- (b) alternate approval process (need 10% of electors responding against to defeat bylaw).

(Sections 84, 85 and 88)

A council may also reserve land for a public purpose. With a 2/3 vote of all council members the bylaw can reserve the land for park or heritage purposes (s. 30). To reverse this latter process you need another bylaw which receives the approval of the electors.



**MISCELLANEOUS:**

Section 117, Duty to respect confidentiality:

Must keep in confidence information from in camera meetings until the subject matter is made public. If wrongfully disclose information (i.e.: not inadvertent) then can be personally liable for any loss to the municipality.

Section 26, Property Disposition:

No longer any obligation to make municipal land and improvements available to public generally when they are put up for sale.

The notice of disposition, where offers to purchase are not being requested, must disclose name of buyer, consideration to be paid and other particulars.

Section 12 – Authority to establish variations, terms and conditions:

Gives a general power to establish many variables for bylaw applicability e.g.: location, time, persons, places, activities.

Section 16 – Authority to enter on or into property:

Establishes general entry rules.

Section 18 – Authority to discontinue providing a service:

A service bylaw can establish the right to disconnect the service if proper notice and right to speak are given.