

PRIVILEGED & CONFIDENTIAL

October 16, 2025

Our File No. 329646

Mr. Brent Larmer
Town Clerk/Director, Legislative Services
The Town of Cobourg
55 King Street West
Cobourg, ON, K9A 0J8

Dear Mr. Larmer:

Re: Strong Mayor Powers and the Municipal Budget Process

A. HISTORY

On May 1, 2025, the Minister of Municipal Affairs and Housing issued O. Reg. 41/25 which designated an additional 170 municipalities, each having councils comprised of six or more members, under section 284.2 of the *Municipal Act, 2001*¹ (“**Strong Mayor Powers**”). The effect of the designation served to extend the powers and duties contained within Part VI.1 of the statute to the Town of Cobourg (the “**Town**”) and its Mayor.²

Part VI.1 of the *Municipal Act, 2001* assigns special powers and duties to the head of council in designated municipalities, including new responsibilities pertaining to the municipal budget. Section 284.16 provides that the powers and duties of a municipality with respect to proposing and adopting a budget are assigned to the head of council of the municipality.

B. BACKGROUND

(a) Mayoral Directive DIR-2025-003

On July 22, 2025, the Mayor issued Directive Number: DIR-2025-003 pursuant to his powers under sections 284.3 and 284.4 of Part VI.1 of the *Municipal Act, 2001*. The directive provided as follows:

I, Mayor Lucas Cleveland, hereby direct staff, in accordance with subsections 284.3 and 284.16 of the Municipal Act, 2001 (the “Act”), the Mayor hereby directs the Chief Administrative Officer and the Director, Corporate Services and Treasurer to:

- 1. Prepare a Draft Staff prepared 2026 Operating and Capital Budget as per previous budget cycles that conforms with the budget and business planning processes and best practices utilized by the Town Staff in*

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

² There are currently 216 municipalities designated in Schedule 1 of O. Reg. 530/22.

previous years with a target levy not to exceed 5% to be presented to the Mayor no later than November 1, 2025.

2. Using the feedback gathered by the 'Community Led Budget Task Force' established and led pursuant to Mayoral Directive DIR-2025-001, using the guidelines principles and recommendations, the Mayor will engage with CAO and Treasurer and Directors to generate the Final Draft 2026 Operating and Capital Budget combining both documents (Staff and Consultant led).

3. Using the Final Draft 2026 Operating and Capital Budget, create an engagement plan led by Corporate Communications Team and that such a strategy be provided to the Mayor for approval prior to implementation.

4. That the proposed Final Draft 2026 Operating and Capital Budget be provided to each Member of Council, the Town Clerk, and the public with the goal of December 1, 2025 and no later than December 15, 2025.

This Directive takes effect on July 22, 2025, and remains in effect unless and until it is revoked in writing by the Mayor in writing and filed with the Town Clerk.

(b) Mayoral Directive DIR-2025-005

On the same day, the Mayor also issued Directive Number: DIR-2025-005 which directed the following:

I, Mayor Lucas Cleveland, in accordance with subsections 284.3 and 284.16 of the Municipal Act, 2001 (the "Act"), hereby directs the Chief Administrative Officer and the Director, Corporate Services and Treasurer to:

1. Enter into an Independent Consultant Agreement with David Dexter, with consultation and final approval with the Mayor to lead and engage in a 'Community Led Task Force' that will review all financial options, with the outcome to recommend a "community formed" set of recommendations to be presented to the Mayor as part of the process to support the creation of the Final 2026 Operating and Capital Budget.

2. Authorize and remit funding to be paid to the consultant for the work in the amount of \$20,000 to be funded through the Staff Contingency Funding Reserve Account upon completion of the consultants' work through successful completion of the 'Community Led Task Force' subject to the terms set out by the consultant by October 1, 2025

This Directive takes effect on July 22, 2025, and remains in effect unless and until it is revoked in writing by the Mayor in writing and filed with the Town Clerk.

(c) Notice of Motion

At a meeting of Council held on September 24, 2025, Council tabled the following Notice of Motion with respect to the Town budget:

Whereas on July 22, 2025, Mayoral Directive 2025-003 directed the following to Staff regarding the 2026 Operating and Capital Budget with the following details:

- *Prepare a draft budget no later than November 1, 2025, following previous budget cycles, with a target levy not to exceed 5%*
- *Use the feedback gathered by the Community Led Budget Task Force to inform the final draft*
- *Create an engagement plan led by the Corporate Communications Team*
- *Provide the proposed final draft to each Member of Council, the Town Clerk and the public with the goal of December 1, 2025 and not later than December 15, 2025*

AND WHEREAS Council, staff and the public benefit from knowing how this directive will be carried out, especially in terms of community engagement and when each step will happen;

THEREFORE BE IT RESOLVED THAT Council direct the Treasurer to provide a report back to Council at the October Regular Council meeting that outlines a detailed process and timeline with a public calendar showing key dates for the 2026 Operating and Capital budget that align with or clarify the deadlines set in the Mayor's directive (e.g., November 1 for drafts, December 1-15 for final drafts) and for the public to understand their opportunities to engage with their Municipal Budget; and

FURTHER THAT, the Staff report incorporate the Council timelines under the new Strong Mayor Powers provisions of the Municipal Act for opportunities for amendments by Council to the Head of Council's budget and indicate where adjustments or risks to meeting those dates may be anticipated; and

FURTHER THAT following the Mayor's budget submission timeline to Council, as noted within the Strong Mayor Power Directive and summarized within the public calendar, Council requests that the Staff prepare a draft 2026 budget to be brought forward directly to Council.

C. ISSUES

We have been requested to prepare a legal opinion regarding the Notice of Motion. Specifically, we have been asked:

1. How should the Notice of Motion be interpreted in light of Strong Mayor Powers and the Mayor's powers and duties with respect to proposing and adopting the budget?
2. How could Council obtain a copy of Town staff's draft budget which was prepared in response to a formal mayoral directive?

D. BRIEF ANSWER

The head of council in a designated municipality that is subject to Strong Mayor Powers is assigned responsibility for proposing and adopting the budget by section 284.16 of the *Municipal Act, 2001*. On or before February 1 of each year, the head of council is required to prepare the proposed budget, provide it to each member of council and the clerk and make it available to the public. The obligations under section 284.16 regarding the preparation of the budget cannot be delegated. However, the head of council has the ability to use to issue formal direction to municipal staff with respect to the preparation of a draft budget pursuant to section 284.3.

Notwithstanding the Mayor's budget responsibilities, Council as a whole maintains certain powers with respect to the budget and the overall financial management of the Town. With respect to the budget, Council has the authority to: (1) make amendments to the budget proposed by the Mayor; and (2) to override the Mayor's veto of any Council amendment to the proposed budget.

In order to make informed decisions regarding potential amendments or to override a potential veto, Council must have access to background information which informs the proposed budget items.

This interpretation is consistent with the role of council set out in section 224 of the *Municipal Act, 2001*:

Role of Council

224 It is the role of council,

(c) determine which services the municipality provides;

...

(e) to maintain the financial integrity of the municipality.

In our opinion, Council can rely upon subsection 3(2) of Reg. 823 under the *Municipal Freedom of Information and Protection of Privacy Act*,³ to request that the municipal clerk provide access to any materials which inform the contents of the Mayor's proposed budget.

³ *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA").

E. LEGISLATION

1. *Municipal Act, 2001*

(a) **Strong Mayor Powers**

Strong Mayor Powers are contained in Part VI.1 of the *Municipal Act, 2001*, which sets out the powers and responsibilities assigned to heads of council in municipalities that have been designated by regulation as municipalities to which Part VI.1 of the *Municipal Act, 2001* applies.

Section 284.3 of the *Municipal Act, 2001* permits the head of council to direct municipal employees, in writing, for specific purposes related to the exercise of the head of council's powers under Part VI.1:

Directions to municipal employees

284.3 For the purposes of exercising powers or performing duties under this Part, the head of council may, in writing, exercise the powers of the municipality to direct municipal employees to,

- (a) undertake research and provide advice to the head of council and the municipality on policies and programs of the municipality or of the head of council as they relate to the powers and duties under this Part; and
- (b) carry out duties related to the exercise of the power or performance of the duty, including implementing any decisions made by the head of council under this Part.

In writing

284.4 (1) If the head of council exercises a power or performs a duty under this Part, the head of council shall do so in writing and in accordance with the regulations, if any.

Section 284.16 of the *Municipal Act, 2001* contains the powers and duties of the head of council with respect to the municipal budget and sets out the process to be followed for the adoption of the budget:

Powers and duties re. budget

284.16 (1) In accordance with this section and subject to the regulations, the powers and duties of a municipality with respect to proposing and adopting a budget are assigned to the head of council of the municipality.

Proposed budget

(2) The head of council shall, in accordance with the regulations, prepare a proposed budget for the municipality and provide the proposed budget to the council for the council's consideration.

Council may adopt or amend budget

(3) After receiving the proposed budget, council may, in accordance with the regulations, pass a resolution making an amendment to the proposed budget.

Veto power

(4) The head of council may, in accordance with the regulations, veto a resolution passed under subsection (3).

Override of veto

(5) Council may, in accordance with the regulations, override the head of council's veto under subsection (4) if two-thirds of the members of council vote to override the veto.

Adoption of budget

(6) The budget for the municipality shall be adopted in accordance with the regulations.

Same

(7) For greater certainty, the regulations may provide for the circumstances in which the budget is deemed to be adopted.

O. Reg. 530/22 contains the requirements for written directions to municipal employees, contemplated in section 284.3 of the *Municipal Act, 2001*:

In writing requirements re s. 284.3 of Act

2. When directing municipal employees under section 284.3 of the Act, the head of council shall, by the next business day, provide a written record of the direction to the clerk and chief administrative officer, if one is appointed.

O. Reg. 530/22 also contains specific provisions governing the annual budget process for designated municipalities:

Annual budget

7. (1) The head of council shall, on or before February 1 of each year,

(a) prepare a proposed budget for the municipality that includes the estimates of sums required under subsection 289 (1) or 290 (1) of the Act, as the case may be;

(b) provide the proposed budget to each member of council and to the clerk; and

(c) make the proposed budget available to the public.

(2) If the head of council does not propose a budget to council by February 1 in accordance with subsection (1), the council shall prepare and adopt the budget for the municipality.

(3) Subject to subsection (4), within 30 days after receiving the proposed budget from the head of council in accordance with clause (1) (b), the council may pass a resolution making an amendment to the proposed budget.

(4) A council may in a year pass a resolution to shorten the 30-day period referred to in subsection (3) for the year.

(5) If council does not pass a resolution under subsection (3) within 30 days, or, if a shorter period is set under subsection (4), within that period, the proposed budget shall be deemed to be adopted by the municipality.

(6) Subject to subsection (7), within 10 days after the expiry of the time period for council to pass a resolution under subsection (3), the head of council may veto a resolution passed by council under subsection (3) by providing on the day of the veto to each member of council and to the clerk a written veto document that includes the veto and the reasons for the veto.

(7) The head of council may in a year shorten the 10-day period referred to in subsection (6) for the year by providing to each member of council and to the clerk a written document specifying a shorter period.

(8) If the head of council vetoes a resolution in accordance with subsection (6), the resolution shall be deemed not to have been passed by council.

(9) If the head of council does not veto a resolution in accordance with subsection (6) within 10 days or, if a shorter period is set under subsection (7), within that period, the proposed budget shall be deemed to be adopted by the municipality.

(10) Subject to subsection (11), within 15 days after the expiry of the time period for the head of council to veto a resolution under subsection (6), council may override the head of council's veto if two-thirds of the members of council vote to override the veto.

(11) A council may in a year pass a resolution to shorten the 15-day period referred to in subsection (10) for the year.

(12) For greater certainty, the head of council may vote as a member of council in a vote to override a veto.

(13) If the council overrides the veto under subsection (10), subsection (8) does not apply, and the resolution shall be deemed to be passed by council.

(14) After the expiry of the time period for council to override the head of council's veto under subsection (10), the proposed budget is deemed to be adopted by the municipality.

(b) The Role of Council

Section 224 of the *Municipal Act, 2001* sets out the role of Council:

Role of council

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;

- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) **to maintain the financial integrity of the municipality;** and
- (f) to carry out the duties of council under this or any other Act.

2. *Municipal Freedom of Information and Protection of Privacy Act*

Subsection 3(2) of Reg. 823: General under MFIPPA provides the following:

- 3. (2) Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

This provision has been interpreted as providing council members with the ability to access records without a formal MFIPPA request where the records are needed for the performance of their duties.⁴

F. ANALYSIS

1. *How should the Notice of Motion be interpreted in light of Strong Mayor Powers and the Mayor's powers and duties with respect to proposing and adopting the budget?*

Subsection 284.16(1) of the *Municipal Act, 2001* assigns to the head of council all of the powers and duties of the municipality with respect to proposing and adopting a budget.

It must be noted, however, that *Municipal Act, 2001* does not give the head of council exclusive authority over the content of the budget. The statute explicitly provides a role for council in the preparation of the budget through council's power to amend the budget (see subsection 284.16(3)) as well as council's power to override a head of council's veto of a council amendment to the proposed budget (see subsection 284.16(5)).

The Notice of Motion directs the Treasurer to provide a report back to Council outlining the process and timeline with key dates for the 2026 Operating and Capital Budget to allow the public to understand opportunities to engage with the municipal budget. The Notice of Motion further directs staff to incorporate opportunities for potential council amendments to the budget under the Strong Mayor Powers timelines.

⁴ Information and Privacy Commissioner of Ontario, "Working with the Municipal Freedom of Information and Protection of Privacy Act: A Councillor's Guide" (November 2001) p. 2 online: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjnzZ7X4IOQAxX7ETQIHcBPI1MQFnoECBcQAQ&url=https%3A%2F%2Fwww.ipc.on.ca%2Fen%2Fmedia%2F1622%2Fdownload%3Fattachment&usg=AOvVaw3i1ehcldeooqtulmMAoHk2&opi=89978449>

In our opinion, Council has the authority to direct the Treasurer and staff as set out in the Notice of Motion, to ensure that the budget process prescribed in section 7 of O. Reg. 530/22 is complied with.

The Notice of Motion further directs staff to prepare a draft 2026 budget to be brought forward directly to Council. In our opinion, Council is authorized to direct staff in this fashion. The Mayor's authority to prepare and propose a budget does not prevent Council from directing staff to undertake the research necessary to inform potential amendments to the Mayor's proposed budget. The Mayor's Strong Mayor Powers with respect to preparing and proposing the budget do not give the Mayor exclusive control over all things budget-related.

2. How can Council obtain a copy of Town staff's draft budget which was prepared in response to a formal mayoral directive?

In order to fulfil its role pursuant to section 224 of the *Municipal Act, 2001* and to exercise its authority to: (1) make amendments to the Mayor's proposed budget; and/or (2) potentially override the Mayor's veto of any Council amendments, Council may reasonably require access to the draft budget prepared by staff in response to the Mayor's directive.

In our opinion, Council may obtain a copy of Town staff's draft budget by requesting the document from the Town Clerk pursuant to subsection 3(2) of Reg. 823 under MFIPPA.

Members of Council would also have the option of submitting a formal MFIPPA request for access to the draft budget prepared by staff in response to the Mayor's directive. If a MFIPPA request was filed, the head (for the purpose of MFIPPA) would be required to consider whether any of the statute's exemptions would apply to exempt the record from disclosure. The head may refuse to disclose the record on the basis of clause 6(1)(a) of MFIPPA (a record that contains a draft of a by-law) or subsection 7(1) of MFIPPA (advice or recommendations of an officer or employee of an institution). Both of those exemptions are discretionary, however, and the head would have sole discretion to determine whether or not to release staff's draft budget.

* * *

Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



Laura Dean
Partner

LD/JM/km