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Public Hearing Procedures

Rationale:

This new provision, which takes effect January 1, 2001, reflects the *Municipal Act* Reform principles of **flexibility**, local government **accountability**, and legislative **clarity** and **simplicity**.

New Provisions:

- Section 890(3.1), clarifies that the chair of a public hearing may establish procedural rules for the conduct of the hearing.
- This provision relates to the formal public hearings that are required to be held prior to third reading of official community plan (OCP) bylaws, zoning bylaws, heritage designation bylaws, and heritage revitalization agreement bylaws which would change the use, or density of use, of property.
- The ability of the chair to establish procedural rules for public hearings exists within the context of the *Act's* requirement that: "At the public hearing all persons who believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity to be heard or to present written submissions" (section 890(3)). The chair's flexibility is limited by the considerable amount of common law surrounding public hearings and "due process".

Related Provisions:

- Other provisions related to the holding of public hearings are found in sections 890-894.

Practical Considerations:

- The *Local Government Act* requires public hearings for the types of bylaws which have the greatest potential to affect how people can use their property, and therefore, which could have the greatest effect on the market values of the subject properties and nearby properties. The assurance of a public hearing, together with the related public notice and information requirements, and the requirement that deliberations must take place in open session, are among the most important "due process" protections associated with these regulatory powers.

- There have been a number of court cases which establish "common law" requirements and restrictions which stem from the principles of procedural fairness and due process. These apply in addition to the statutory requirements in the *Local Government Act*.
- Separate from the legal requirements, appropriate procedural rules are needed to ensure that the council or board gets sufficient information to make appropriate decisions about proposed bylaws, and to enable the public to see that the local government acknowledges and respects their right to participate in the local decision making process.
- To help ensure that its public hearings conform both to principles of good practice and to all legal requirements, local governments may wish to ensure chairs of public hearings are aware of the constraints on their power. While the authority to make the rules rests with the chair of the hearing, it is the local government that bears the risk of a challenge to the bylaw that is subject to the hearing, so it is in the local government's best interest to ensure that public hearings are conducted appropriately. For this reason, local governments may wish to develop and present advice to chairs in a relatively formal way, after discussing the matter with their legal advisors.
- Advice to chairs can be given in a number of ways, including the development or endorsement of a suggested set of standard policies or rules. Procedural policies, rules or other advice to chairs could cover such items as determining speaker lists, reasonable time limits (if any), whether questions can be asked of proponents or planning staff, and rebuttal time limits.
- The chair of a public hearing should indicate what procedural rules will apply at the beginning of every public hearing and should take care not to alter these rules during the hearing. Any controversies about the subject matter of the bylaw are likely to be exacerbated by any perceptions that the rules are being made up or changed as the hearing progresses, and an appearance of arbitrariness or unfairness by the chair could lead to a legal challenge.
- In the case of OCP bylaws, in addition to the requirement for a public hearing, public consultation is now required during the development of the OCP (see Bulletin Number G.2.1.0 - OCP Process and Consultation). The authority to set procedural rules for public hearings does not extend to this new public consultation requirement, because the role of that consultation is very different than that of the formal public hearing, and the format for the public consultation can be much more informal.

Transitional Provisions:

- There are no transitional provisions related to this amendment.

Local Government Act References:

Primary Sections: s. 890(3.1)

Bill 14 Sections: s. 890-894, 966(8), 968(2), 879