

Strong mayor powers given to Hastings Highlands

By Bill Kilpatrick

On April 9 the government of Ontario announced that on May 1 they were adding 169 municipalities to the current 47 municipalities who have been granted strong mayor powers. Two of the new municipalities that have been added to the ever-growing list are The Town of Bancroft and the Municipality of Hastings Highlands. At the May 21 meeting of Hastings Highlands council, members heard from municipal land use and planning lawyer, John Mascarin, a partner at the law firm Aird Berlis, who provided a close to two-hour presentation of how the new powers could potentially impact the municipality. Mascarin went over some of the history of where the idea for strong mayor powers came from, the legislation itself, and how the new powers could be used, and the implications for the municipality and for the mayor.

A brief background of strong mayor powers

In August and September of 2022 the government of Ontario passed into law bill 3, the Strong Mayors, and Building Homes Act and bill 39 the Better Municipal Governance Act respectively. The legislation greatly expanded municipal mayor's unilateral executive authority in four separate areas including budget powers/duties, administrative/political powers, provincial priority powers, and miscellaneous. Initially the powers were only granted to the mayors of Toronto and Ottawa, but in July of 2023 they were expanded to another 26 municipalities, followed by another 18 in October of 2023, and, according to the government of Ontario, the City of Orillia was temporarily granted strong mayor powers on April 3 to help deal with the damage from an ice storm. Now another 169 have been added to the list.

According to Mascarin the idea for expanding municipal mayor's powers most likely came from the Premier Doug Ford himself, who drew his inspiration from the City of Chicago. Mascarin referred to the city as the "best known strong mayor municipality" in the United States, which also happens to be the Ford family's Deco Labels and Tag business headquartered in the U.S. Mascarin quoted Ford who said in his and his brother Rob's 2016 book, *Ford Nation: Two Brothers, One Vision* that "If I ever get to the provincial level of politics, municipal affairs is the first thing that I would want to change. I think mayors across the province deserve stronger powers. One person in charge, with veto power."

The "weak mayor" system versus the "strong mayor" system

In the agenda report prepared by the clerk Suzanne Huschilt she presented a chart prepared by the Association of Clerks and Treasurers of Ontario that she said "succinctly identifies the key differences between a Strong Mayor System and a Weak Mayor System." In the old "weak mayor" system the mayor's role was one of a "figure head" who has no more power than any other councillors, whereas in the new strong mayor system the mayor has more "power and authority than other members of council." Previously mayors had "no formal authority outside of council," their role was political and "provided oversight when acting with the whole of council," and they had to "use relationships and influence to collaborate with other members to make decisions for the municipality." Now mayors have been given the authority to make "independent decisions in some areas," they have also have authority over administrative matters, and they are provided with "veto power" in some areas.

Mascarin pointed out that currently there is only one court case that is challenging parts of the new strong mayor legislation and that is a judicial challenge by the city of Peterborough. Meaning that the courts have yet to interpret the new legislation and how it should be applied which has given rise to different interpretations of the legislation. Mascarin explained that for this reason much of the information that he was providing was based on his opinion of how the legislation was written and how it has been used so far in other municipalities. There are some parts that are fairly straightforward such as the new power of the mayor to hire and fire the Chief Administrative Officer and the requirement of the mayor to submit a budget for the municipality. But what was less clear was how the power to hire or fire the CAO could be utilized with an employee who was in a dual role such as a CAO/Clerk or a CAO/Deputy Treasurer given the legislation prohibits the mayor from hiring or firing employees in "statutory positions."

One aspect of the strong mayor legislation that is clear cut, said Mascarin, was how the powers are exercised. He stated that any directions from the mayor under the strong mayor legislation "can't be oral, can't be verbal, must be in writing and there has to be some disclosure to council and to the clerk and the clerk must make it publicly available." This, according to the Clerk's report, is meant to "ensure accountability and transparency" and can be done through either a "mayoral decision or a mayoral directive." The clerk's report outlined the difference between the two directives stating "Mayoral decisions are records of decisions made by the mayor regarding governance and policy and are required to be made public. Mayoral directives are records of directions made by the mayor and given to staff to do research and preparation on an item."

Other powers that the strong mayor legislation grants to heads of council is the power to create new committees of council and appoint their chairs and vice-chairs, creating and reorganizing the structure of the municipality, hiring or dismissing other municipal division heads, directing staff to complete research or carry out changes they have made using their new powers. Strong mayors can also veto bylaws if they "are of the opinion that all or part of the bylaw could potentially interfere with a provincial priority." Provincial priorities are areas that a government deems to take priority over other areas. In the case of the Ford Government their priorities are housing and infrastructure.

There are provisions in the strong mayor legislation that allow the mayor to delegate their strong mayor powers to council, but, according to Mascarin, they can take them back at any time. There are also provisions that allow council to override a mayor's powers of veto under certain circumstances and with a two-thirds vote. And yet another provision allows the mayor to pass certain by laws using powers of "provincial priorities" with only one-third of the votes on council. There are also provisions within the strong mayor legislation that would allow the mayor to overrule the procedural by law. Mascarin also pointed out that if a mayor has a pecuniary interest either direct, indirect, or deemed they cannot use any of the strong mayor powers.

There did not appear to be any council members, including the mayor and deputy mayor, that welcomed this change for the municipality. Commenting on the strong mayor provisions Councillor Nancy Matheson expressed her "strong opposition" to the change adding that in her opinion it "undermines the principles of democracy and compromise the integrity of the democratic process" and diminishes the role of council members all of whom were elected to represent the interests of our municipality. Each member here deserves an equal voice and an equal vote at the table." Matherson added that the strong mayor powers "blur the line between political and administrative authority contributing to what I view as the erosion of democratic governance."

Commenting on his new powers Mayor Tony Fitzgerald said, "A good mayor doesn't need strong mayor powers. A good mayor needs a good council and a good staff, and I'm blessed with both." Councillor Keith Buck asked the mayor if it was his intention to delegate his powers when possible. Fitzgerald replied ambiguously stating, "They [the province] are forcing us [to use the powers and] if you don't use the strong mayor powers you have to delegate it" let's say I delegate the dismissal of the CAO to council, I'll just throw that out as an example? I could later do it anyway, so what's the difference? That's how it's written that I can delegate a power to council or staff and still override it. We've got no rules on the playground?"

The results of how much the new strong mayor powers have actually increased housing are mixed at best. Despite assertions by the province that "Strong mayor powers have been used across the province to support the building of more homes. For example, they have been used to facilitate a new housing complex near transit in Ajax and to direct staff in St. Catharines to prioritize housing developments," the Association of Municipal Clerks and Treasurers of Ontario has concluded that "While the government continues to justify the expansion of strong mayor powers as a tool to build housing, there is no evidence to suggest this legislation has any impact on the number of housing starts in municipalities that have been granted the powers." AMCTO further commented that "Alternatively, our research indicates that strong mayor powers have blurred the political-administrative authority between the roles of head of council and chief administrative officers, threatening the neutrality of the public service and politicizing local government leadership." According to Mascarin the Association of Municipal Clerks and Treasurers of Ontario called the new strong mayor powers a "significant and dangerous change for Ontario."

The biggest fear that Mayor Fitzgerald has is the "legislative burden" that the new powers will put on staff. Fitzgerald also expressed frustration with many aspects of the strong mayor powers regarding how unclear many of the provisions are. In the end though the municipality, like the other 169 municipalities, will have to find a way to adapt to the new power dynamic that the legislation brings

with it. ?We don't have a lot of answers,? said the mayor. ?We'll just have to work our way through it.?