

COVID-19 and Local Governments In the Northwest Territories



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As the impact of the COVID-19 pandemic increases across Canada, local governments are facing many difficult questions about their role in responding to the pandemic. Although much of the response is being led at the federal, provincial, and territorial levels, particularly through the orders and advice of the Chief Public Health Officer, all levels of government have a role to play in combating this pandemic, supporting public health, and flattening the curve.

As local governments work hard to respond to this crisis, they also need to continue to operate in challenging circumstances. This means holding council meetings, providing essential public services, and communicating with residents. This bulletin highlights some of the tools available to local governments in the Northwest Territories.

It's Not Business as Usual, But Council Must Still Meet

Councils are required by statute to meet at least once each month. However, in these times of social distancing and self isolation, councils may have serious and well-founded concerns about bringing their members and the public together for a council meeting.

Both the *Cities, Towns and Villages Act* and the *Hamlets Act* allow councils to conduct meetings remotely in two circumstances: (1) when council members are outside the community when the meeting is scheduled to occur; or (2) when council members are physically unable to attend in person. This reflects the normal rule that those who can attend in person must do so. But these are anything but normal times. On March 22, 2019, the Chief Public Health Officer of the Northwest Territories advised that all gatherings, of any size, be cancelled across the territory. The Chief Public Health Officer has not yet made this a binding order, but it appears likely that this may change in coming days. In any event, it is hard to imagine how a council could comply with the existing advisory while holding an in-person meeting, particularly a meeting open to the public. If the requirements of social distancing cannot be met at a council meeting, councils may well consider that it is physically impossible for any members of council to meet in person, such that all must participate by electronic means. This is consistent with the approach being taken by municipal councils elsewhere in Canada, many of whom are now only conducting electronic council meetings.

To comply with the legislation, councils must ensure that electronic meetings allow members to be heard and to hear each other, and members of the public must also be able to hear what is said at the meeting. This is consistent with the requirement that all meetings

be open to the public, subject to a narrow exception for closed (or *in camera*) meetings to discuss certain prescribed subject matter.

Facilitating public attendance at electronic meetings can be a significant challenge in the north, particularly given the slow internet speeds experienced in most communities. For most communities, it simply isn't realistic to stream council meetings online. But councils should be aware that there is no requirement for members of the public to see the meeting - all that's needed is for the public to be able to hear the proceedings. This could be satisfied, for example, by using a conference call line that allows members of the public to join the meeting by telephone.

What Can Local Governments Do to Protect Their Communities?

Because local governments have significant authority to enact bylaws and regulate behaviour within community limits, they may want to consider how if steps can be taken through bylaw to enhance the safety of residents. For example, the City of Toronto has enacted a bylaw to impose "emergency physical distancing" in City parks and squares, with contravention punishable by a fine. Ottawa has banned all open-air burning, to minimize the risks of fires and ensure first responders are available to respond to calls related to COVID-19. Other communities are waiving penalties for late payment of utility bills in recognition of the economic toll of the pandemic on many households.

In addition to prohibiting problematic conduct, local governments are also uniquely positioned to support local initiatives to foster well-being. Examples from southern Canada include deploying municipal staff and volunteers to conduct wellness checks on seniors by telephone, and even preparing low-cost meals for seniors using municipal facilities.

As local governments consider their options in responding to the many challenges they face, it is important to recall that local governments' powers are limited to what is found in the various statutes creating and regulating municipal authorities, such as the *Cities, Towns and Villages Act* and the *Hamlets Act*. Where a community wishes to take steps that are not clearly authorized by legislation, we recommend consulting with the Department of Municipal and Community Affairs and seeking legal advice.

Can Local Governments Ban or Restrict Alcohol or Cannabis in Their Communities?

Some communities and indigenous organizations in the Northwest Territories have expressed a desire to impose a temporary ban on alcohol in response to the pandemic. Countries around the world are grappling with how to address alcohol use and abuse in the context of the pandemic, with some, like Greenland, temporarily banning alcohol sales in some communities in hopes of reducing alcohol-fueled violence in homes while families are isolating. Others have kept alcohol and cannabis stores open. Whatever a community's views on alcohol and cannabis may be, it is important to understand the distinct roles of municipal governments, band councils and the territorial government should a community wish to impose restrictions as part of its pandemic response.

While communities in the Northwest Territories do have the power to restrict the sale of alcohol and cannabis, these restrictions can only be imposed after a plebiscite is held under

the *Liquor Act* or the *Cannabis Products Act*. However, both statutes also allow municipal and band councils to request that the Minister prohibit the consumption, sale, purchase or transportation of liquor or cannabis in all or part of the community for a period no longer than 10 days. A temporary prohibition order can be made "if special circumstances exist in the community" that warrant it. Neither statute says what these circumstances would be, and a community that feels such a prohibition order is necessary would need to explain what these circumstances are when making the request. It may be that increased levels of violence during mandatory isolation or quarantine would meet this threshold.

Questions? Contact Us

Circumstances are changing and this article was last updated on April 8, 2020. If you have any questions, please contact Alyssa Holland, Lawson Lundell LLP, at aholland@lawsonlundell.com.

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