

Basic Principles of Bylaws



Alberta Municipal Affairs

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Basic Principles of Bylaws
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The contents of this publication are intended to provide general information. Readers should not rely on the contents herein to the exclusion of independent legal advice. All publications of this document prior to October 2017 no longer contain complete information.

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Introduction

Section 7 of the *Municipal Government Act (MGA)* sets out the general jurisdiction to pass bylaws. This general jurisdiction gives broad authority to municipalities to develop bylaws unique to each municipality. Councils are expected to act in good faith and in the public interest when creating laws. Municipal administration, who usually drafts bylaws, is expected to act in good faith when carrying out the responsibility. Creating a bylaw that meets general statutory and fundamental principle standards is only part of the process. A good bylaw needs to be drafted for certainty, predictability, democratic transparency and accountability. Municipal administration should aim to create bylaws that are understandable, enforceable and accomplish the council's desired goal. A listing of the sections of the MGA that allow for bylaws to be passed is attached to this document.

This guide provides the basic principles for developing bylaws and is an information summary only and has no legislative sanction. For certainty, refer to the *Municipal Government Act* and the *Interpretation Act*, copies of which are available for purchase from Alberta Queen's Printer Bookstore. It is recommended that municipalities obtain legal advice when developing a bylaw.

What is a bylaw

A bylaw is a law made by a local authority in accordance with the powers conferred by or delegated to it under a statute, in this case the MGA. Council may pass a bylaw to govern the affairs within the council (the procedural bylaw and code of conduct for councillors) and bylaws that govern within the municipality. Common bylaws include vehicle parking and stopping regulations, animal control, licensing, noise, business regulation, and management of public recreation areas.

A municipal by-law is no different than any other law of the land, and can be enforced with penalties, challenged in court and must comply with higher levels of law. Municipal bylaws are often enforceable through the public justice system, and offenders can be charged with a criminal offence for breach of a bylaw.

Authority

Section 180 of the MGA states:

- (1) A council may act only by resolution or bylaw.
- (2) Where a council or municipality is required or authorized under this or any other enactment or bylaw to do something by bylaw, it may only be done by bylaw.
- (3) Where council is required or authorized under this or any other enactment or bylaw to

do something by resolution or to do something without specifying that it be done by bylaw or resolution, it may be done by bylaw or resolution.

Section 692 provides special considerations for bylaws pertaining to Part 17 Planning and Development.

Drafting Bylaws

There are 3 types of bylaws: main bylaws; amending bylaws which are used when changes materially affect the bylaw in principle or substance; and revision bylaws which can be used when a municipality needs to make limited types of changes to a bylaw.

Drafting bylaws is usually the responsibility of the Chief Administrative Officer (CAO) or a person delegated that function. There are resources available, such as:

- a) Have your municipal solicitor prepare bylaws.
- b) Contact your municipal association for a sample bylaw if one is available.
- c) Obtain a sample bylaw from a neighboring municipality.

Bylaws should be drafted in plain and simple language to ensure that they are easily understood and enforceable. Section 12 of the *Interpretation Act* states that the preamble is part of an enactment to assist in explaining the enactment. However, tables of contents, marginal notes and section headers and statutory citations after the end of a section or schedule are not.

Parts of a Bylaw

Corporate Title

Use the full corporate title of the municipality on the bylaw.

Bylaw Number

It is a best practice to use a logical sequence when numbering bylaws and include the year that the bylaw was written and a consistent and uniform numbering and/or lettering system for sections, subsections, paragraphs, and sub-paragraphs in your bylaws.

Sub-Title to Describe Purpose

Include a brief statement of the bylaw's purpose. A purpose clause is intended to provide a better understanding of the legislative intent of the council and resolve any possible ambiguities in the bylaw.

Example:

WHEREAS, under the provisions of the *Municipal Government Act*, a council may pass bylaws respecting Business, Business activities, and persons engaged in

Business, and provide for a system of licensing including any or all of the matters listed therein;

Enactment

The enacting clause of a bylaw may read:

NOW THEREFORE, the Council of the _____ Municipality _____ in the Province of Alberta, enacts as follows:

Citation

It is often necessary to have a short form name for the bylaw, so that it may be referred to in minutes. The citation is suggested to read as follows:

This Bylaw is cited as the _____ Municipality _____ "Business Licence Bylaw".

Definitions

Definitions should be used sparingly. Section 13(a) of the *Interpretation Act* provides that definitions in a bylaw (unless otherwise stated) are applicable to the entire bylaw including the section containing the definitions. Section 13(b) of the *Interpretation Act* provides that definitions in the *Municipal Government Act* are deemed to apply to bylaws made under that Act. Section 28 of the *Interpretation Act* provides that all of the definitions listed in that section apply to every bylaw enacted by a local government even if the words or phrases are not again defined in the bylaw.

Terms that are particular to the bylaw must be defined. A word or phrase should be defined only if:

- a) It is not being used in its dictionary meaning or is being used in one of several dictionary meanings.
- b) It is used as an abbreviation of a longer word or phrase.
- c) The definition is intended to limit or extend the ordinary meaning of the word or phrase.

The following are examples of possible definitions:

- a) "Select standing committee" means the Select Standing Committee on Legislative Offices;
- b) "Lease" *includes* an agreement for lease (*extends*)
- c) "Dividend" *does not* include a stock dividend (*limits*).

Statement of to Whom and to What the Bylaw Applies

The bylaw must be specific in declaring who or what is affected.

For example, "The bylaw applies to all persons who is a cat owner in the Town of Anywhere."

General Rules and Special Provisions

You may want to set out in the bylaw any special provisions or rules that would be applied. These should be drafted carefully, being well organized, clear and complete. There must be authority in legislation or regulation for each provision in the bylaw. Each statement should be clear and precise enough that everyone is able to determine what they must or must not do in order to comply with it. Try to keep sentences short, simple and concise, using plain language and clear formatting.

For example, "No person shall engage in or operate a Business in the City unless the person holds a Business Licence authorizing them to engage in or operate that Business."

Severability Clause

A regulatory bylaw should contain a provision that allows the bylaw to remain valid if any portion of the bylaw is found by the Court of Queen's Bench to be invalid. Be aware that if the court finds that the council intended that the invalid portion is an integral part of the remainder, it may set aside the entire bylaw despite a severability clause.

Schedule Clauses

A schedule can be added as a supplement to the bylaw. The bylaw will include a reference to the schedule, which is attached and forms part of the bylaw. The schedule should include the bylaw number and a schedule number or letter. When a schedule is attached to a bylaw it becomes part of the bylaw; therefore it cannot be changed by a motion or resolution of council, but must be changed by an amending bylaw. Schedules are particularly useful for utility rate bylaws, as these amounts are often subject to review and adjustment. (rev. July 2018)

Penalty Clause

Penalty and enforcement sections should be provided for in regulatory bylaws.

Example: "Any person who is in contravention of this Bylaw is guilty of an offence and is subject to receive a Municipal Tag in the amount of \$300.00 for the first offence."

"Where a Business Licence has expired and the Business is still in operation, the person is guilty of an offence under this Bylaw."

Section 7(i) of the MGA sets out some of the penalties that may be written into bylaws.

Transitional Clause

If applicable, provisions must be included that cover the period during which persons affected by the bylaw can do things to conform to the new conditions. Otherwise, the bylaw is in full effect when it receives third reading and the necessary signatures.

Repeal Clause

All previous bylaws that deal with subjects that are addressed in the new bylaw must either be

repealed or amended. In the new bylaw, the number and description of the bylaws to be repealed or amended should be specified. It is also important to reference the repeal of any amendments to those bylaws.

Example, “Upon third reading of Bylaw ____, Bylaw ____ and all amendments thereto are hereby repealed.”

Passing a Bylaw

Readings

Section 187 of the *MGA* is very specific in its provisions regarding bylaw readings. It states that every proposed bylaw must have three distinct and separate readings. A proposed bylaw must not have more than two readings at a council meeting unless the councillors present unanimously agree to consider third reading.

The *MGA* requires that before the meeting at which first reading or third reading is to take place, each councillor present must be given or have had the opportunity to review the full text of the proposed bylaw. Only the title or identifying number has to be read at each reading of the bylaw.

The recording secretary must make sure all readings are included in the minutes. If all three readings are to take place at the same meeting, a motion to consider third reading must be presented and carried unanimously, prior to third reading taking place. The recording secretary must include the motion to consider in the minutes and record the vote as CARRIED UNANIMOUSLY.

Effective Date and Signature

Section 189 indicates that a bylaw is passed when it receives third reading and it is signed in by the chief elected official and a designated officer (CAO). A bylaw comes into force at the beginning of the day that it is passed unless otherwise provided for in an enactment or in the bylaw. No bylaw may come into force on the day before it is passed unless the enactment authorizing its passage specifically allows it to come into force that day. Although the legislation does not specifically address the seal on documents, it is advisable to seal over the signatures to deter possible tampering.

Conditions

If there are statutory conditions required prior to passing the bylaw, such as the necessity for approval by an external authority, it is advisable to set out the date of the satisfaction of the condition on the last page of the bylaw under the “readings”.

The *MGA* outlines some of the procedures that must be followed before a bylaw or resolution can be voted on. Certain bylaws cannot be passed until the public has been notified through advertising, of the intention to pass the bylaw. Examples include a road closure under section

22 or a bylaw that authorizes a loan under section 265. While not legislatively required, first reading can take place before the public is notified, but before second and third readings are held, the administration must follow the advertising requirements set out in section 606.

Amending or Repealing Bylaws

The power to pass a bylaw includes the power to amend or repeal it. Section 191 of the MGA states that the amendment or repeal must be made in the same way as the original bylaw and is subject to the same consents, conditions, or advertising requirements as the passing of the original bylaw.

A schedule to a bylaw is part of a bylaw. To change a schedule, another bylaw is required that states “Schedule A of bylaw XXX is amended as follows” or “is repealed and replaced with Schedule A, attached to and forming part of this bylaw.”.

A schedule to a bylaw cannot be amended by any means other than by another bylaw amending the schedule. (rev. July 2018)

However, when a bylaw is revised under section 63, and includes the words ‘revised bylaw’ in the title, a public hearing or advertising is not required.

Revising Bylaws

63(1) A bylaw under this section may

- (a) omit and provide for the repeal of a bylaw or a provision of a bylaw that is inoperative, obsolete, expired, spent or otherwise ineffective;
- (b) omit, without providing for its repeal, a bylaw or a provision of a bylaw that is of a transitional nature or that refers only to a particular place, person or thing or that has no general application throughout the municipality;
- (c) combine 2 or more bylaws into one bylaw, divide a bylaw into 2 or more bylaws, move provisions from one bylaw to another and create a bylaw from provisions of one or more other bylaws;
- (d) alter the citation and title of a bylaw and the numbering and arrangement of its provisions, and add, change or omit a note, heading, title, marginal note, diagram or example to a bylaw;
- (e) omit the preamble and long title of a bylaw;
- (f) omit forms or other material contained in a bylaw that can more conveniently be contained in a resolution, and add authority for the forms or other material to be prescribed by resolution;
- (g) make changes, without materially affecting the bylaw in principle or substance,
 - (i) to correct clerical, technical, grammatical or typographical errors in a bylaw,
 - (ii) to bring out more clearly what is considered to be the meaning of a bylaw, or
 - (iii) to improve the expression of the law.

- (3) The title of a revised bylaw must include the words “revised bylaw”.
- (4) A bylaw under this section must not be given first reading until after the chief administrative officer has certified in writing that the proposed revisions were prepared in accordance with this section.

Section 692(6) allows much the same process for planning bylaws.

Petition for a Bylaw

Under the MGA, electors may petition for a new bylaw or a bylaw to amend or repeal a bylaw on any matter within the council's jurisdiction. A petition requesting an amendment or repeal of a bylaw made under Parts 8 (Financial Administration), 9 (Assessment of Property), 10 (Taxation), 17 (Planning and Development), or 17.2 (Intermunicipal Collaboration) of *MGA* has no effect.

Within 30 days of the CAO declaring a petition submitted under Section 232 to be sufficient, the council must give first reading to a bylaw dealing with the subject matter of the petition and any other related matter that the council considers necessary. If there is no requirement to advertise the bylaw, the council must pass the bylaw within 30 days of first reading or set a date for the electors to vote on it. A vote of the electors must be held within 90 days of the first reading.

Petitions for Advertised Bylaws

After advertising a proposed bylaw, the electors may submit a petition to hold a vote to determine whether the proposed bylaw should be passed. Advertised proposed bylaws under section 22 and Part 17 (Planning and Development) cannot be petitioned.

If a sufficient petition is received, the council must either decide not to continue with the proposed bylaw or decide to continue and submit the bylaw to a vote of the electors within 90 days after the CAO declares the petition sufficient. Section 231 of the MGA details what action council should take after the electors vote.

Challenging Bylaws

Under section 536 of the MGA any person can apply to the Court of Queen's Bench to have a bylaw declared invalid. Section 536(2) allows a person to apply for an order requiring council to amend or repeal a bylaw as a result of a vote by the electors (on the amendment or repeal).

A bylaw can be challenged and declared invalid on the basis that the proceedings and/or the manner of passing the bylaw do not comply with an enactment. The application must be made within 60 days after the bylaw is passed.

An application to the court to quash a bylaw may be made at any time for the following reasons:

- the bylaw is required to be put to a vote of electors and the vote has not been conducted, or the bylaw was not given the required approval in such a vote,
- the bylaw is required to be advertised and it was not, or
- a public hearing is required regarding the bylaw and it was not held.

No bylaw or resolution may be challenged on the ground that it is unreasonable.

To avoid challenges to your municipal bylaws, it is recommended that council and administration observe the following:

- (a) that the bylaw be enacted according to the Statutes of Alberta.
- (b) that a municipality cannot enact a bylaw that controls any matter over which the federal or provincial government have exclusive control; for example, a bylaw for the fine or penalty for speeding.
- (c) that the bylaw should not treat one group within a class differently from another group. An example of a discriminatory bylaw would be one that closed shops at 6:00 pm in the suburbs, but permits downtown shops to remain open later.
- (d) that council does not pass bylaws that affect an individual's rights
- (e) that the meanings within the bylaw are clear and precise. For instance, a community standards bylaw stating that the grass must be cut or mowed on a regular basis is not explicit. There is a need to provide a more definite explanation; for example, how long the grass has to be before it is considered unsightly.
- (f) That when questions arise, a review by legal counsel is recommended.

There is an expectation that bylaws enacted by a municipality will be enforced. Municipalities have been found negligent by the courts for not enforcing bylaws.

Security of Bylaws

The security of bylaws is the duty of the CAO according to the provisions of Section 208(1)(b) of the MGA. Your bylaws are permanent records and should be stored in a fire proof safe, or perhaps backed up electronically and stored in a secure location. Bylaws may be kept for centuries, so take care of their appearance and preservation.

References

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