

*Municipal Affairs*

**Basic Principles of Bylaws**

Alberta Municipal Affairs (2013) *Basic Principles of Bylaws*

Edmonton: Alberta Municipal Affairs

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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. 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 and some sample bylaws are attached to this document in the appendices.

## Definition

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 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.

## Drafting Bylaws

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.

(d) Access the Municipal Excellence Network for samples.

Bylaws should be drafted in plain and simple language to ensure that they are easily understood and enforced. Words and phrases that have more than one meaning should be defined within the bylaw. Refer to the *Interpretation Act* to ensure that the intention of any bylaw is not altered by that Act. The *Interpretation Act* is available from the Queen's Printer.

The Interpretation Act states that:

### **Preambles and reference aids**

**12(1)** The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.

**(2)** In an enactment,

(a) tables of contents,

(b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule are not part of the enactment, but are inserted for convenience of reference only.

Bylaws should be logically numbered and indexed for easy reference and tracking. 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.

### **Parts of a Bylaw**

#### *Corporate Title*

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

#### *Bylaw Number*

Use a logical sequence when numbering bylaws and include the year that the bylaw was written.

#### *Purpose*

Include a brief statement of the bylaw's purpose.

#### *Definitions*

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*).

The *Interpretation Act* includes a listing of general definitions for terms normally used in bylaws.

#### *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 and/or all businesses."

#### *General Rules and Special Provisions*

You may want to set out in the bylaw any special provisions or rules that would be applied. For example, "Garbage collection will be done on Wednesdays for those areas north of the track."

#### *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. Schedules are particularly useful for utility rate bylaws, as these amounts are often subject to review and adjustment.

#### *Penalty Clause*

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

#### *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.

### **Passing a Bylaw**

#### *Effective Date*

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.

#### *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 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, the motion to approve the third reading must be unanimous, and the recording secretary must include the motion in the minutes.

### *Signature*

A bylaw must be signed by the chief elected official and a designated officer as outlined in Section 213(3) of the *MGA*. Also, a bylaw is passed after receiving third reading and being signed. Although the legislation does not specifically address the seal on documents, it is advisable to seal over the signatures to deter possible tampering.

Generally, the courts are inclined to quash bylaws that have been passed without strict observation of proper procedures. 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 and bylaw that authorizes a loan under section 265. A 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 that bylaw so to change the 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.

### **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), or 17 (Planning and Development) 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 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 permitted 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, an unsightly property 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.

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(d) 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.

This guide provides the basic principles for developing bylaws. Understanding the key principles will help drafters develop clear and crisp bylaws. For certainty, legal advice should be sought before final reading of a bylaw.

**This guide is an information summary only and has no legislative sanction. For certainty, refer to the *Municipal Government Act* and the *Interpretation Act*. Copies are available for purchase from Alberta Queen's Printer Bookstore.**

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**Requires Advertising**

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