

Basic

Principles of Bylaws

Municipal Affairs, Government of Alberta

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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 councils 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 draft bylaws, is expected to act in good faith when carrying out this 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 as 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 to assist in the preparation of municipal bylaws, 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 (do not plagiarize!).

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 are cat owners 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, or penalties bylaws as these amounts are often subject to review and adjustment.

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 by resolution 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 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 second and third readings cannot occur until administration follows 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.

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 fireproof 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.

Bylaw Review

Municipalities are encouraged to maintain a master registry or index that at a minimum lists all bylaw numbers and titles. A regular review of this index and all bylaws should occur in order to confirm which bylaws are still relevant and to identify those bylaws that have become redundant because they have no further need, action or consequence. Redundant bylaws that are no longer enforced should be officially cancelled by passing a repealing bylaw. For example, a bylaw that requires the licensing of dogs should be repealed if council determines that dog licensing is no longer necessary or the bylaw will no longer be enforced. A bylaw review may result in a repealing bylaw that includes a list of several bylaws to be repealed at once.

However, it is recommended that bylaws involving some type of financial implication (i.e., bylaws for borrowing, imposing tax rates or local improvement levies, etc.) not be repealed. Rather, it is recommended municipalities maintain a bylaw registry or tracking system that is updated regularly to help categorize their bylaws effectively. For example, the 2019 tax rate bylaw would not be repealed in 2020 but can be moved from the active category to the expired category at the end of 2019. All bylaws, including bylaws that have been repealed, should be retained permanently in the appropriate file or binder and the bylaw registry should be updated accordingly.

If there is uncertainty about whether repealing a bylaw may cause unintended financial or other consequences, a municipality should consult with their legal advisor.

Municipal Government Act Sections Requiring Bylaws

** Yellow highlight signifies **mandatory** bylaws.

Section	Part and Title	Legislated Requirements
PART 2		
GENERAL JURISDICTION		
7	General jurisdiction to pass bylaws	
8	Powers under bylaws	
PART 3		
ROADS		
22	Road Closure	Requires Advertising
26	Temporary roads and rights of way	
27	Leases	
MUNICIPAL PUBLIC UTILITIES		
33	Prohibiting other public utilities	
NON-MUNICIPAL PUBLIC UTILITIES		
46	Prohibiting other non-municipal public utilities	
BUSINESS IMPROVEMENT AREAS		
50	Establishing Business Improvement Area	
REVISION AND CONSOLIDATION OF BYLAWS		
63	Revising bylaws	
69	Consolidation of bylaws	
LIMITS ON MUNICIPAL POWERS		
74	Firearms	
75	Forest and Prairie Protection Act	
PART 4.1		
CITY CHARTERS		
141.5	Elements of a Charter	Requires Public Hearing

Section	Part and Title	Legislated Requirements
PART 5		
COUNCILS AND COUNCIL COMMITTEES		
143	Number of councillors for municipalities	Requires Advertising
144.1	Maternity and parental leave	
145	Bylaws -- council and council committees	
146.1	Codes of Conduct	
ELECTIONS, APPOINTMENTS AND WARD SYSTEM		
148	Division of municipality into wards	Requires Advertising
150	Election or appointment of chief elected official	Requires Advertising
PECUNIARY INTEREST OF COUNCILLORS		
171	Bylaw requiring statement of disclosure	
PART 6		
MUNICIPAL ORGANIZATION AND ADMINISTRATION		
203	Delegation by council	
205	Establishment of chief administrative officer	
210	Designated officers	
214	Destruction of records	
226.1	Bylaws modifying petition requirements	
230	Public hearing (Procedures for holding)	
PART 8		
BORROWING		
251	Borrowing bylaw	Requires Advertising - Review sections 256 thru 263 to determine if advertising is required for each instance
LOANS AND GUARANTEES		
265	Loan bylaw	Requires Advertising
266	Guarantee bylaw	Requires Advertising
PART 9		
PREPARATION OF ASSESSMENTS		
297	Assigning assessment classes to property	

Section	Part and Title	Legislated Requirements
304(1)(j)(ii)	Recording assessed persons (DMH)	Requires Advertising
304(1)(k)	Recording assessed persons (DMH)	
PREPARATION OF SUPPLEMENTARY ASSESSMENTS		
313	Preparation of supplementary assessments	
PART 10		
TAXATION		
339	Incentives - (for payment of property taxes)	
340	Installments	
344	Penalty for non-payment in current year	
345	Penalty for non-payment in other years	
351	Non-taxable property	
PROPERTY TAX		
353	Property tax bylaw	
357	Special provisions - (compulsory installments)	
363	Exempt property that can be made taxable	
364	Exemptions granted by bylaw	
364.1	Brownfield tax incentives	Requires Public Hearing
364.2	Tax incentives for non-residential property	
369	Supplementary property tax bylaw	
BUSINESS TAX		
371	Business tax bylaw	
377	Business tax rate bylaw	
379	Supplementary business tax bylaw	
381	Business Improvement Area Tax (AR 93/2016)	
COMMUNITY REVITALIZATION LEVY		
381.2	Community revitalization levy	
SPECIAL TAX		
382	Special tax bylaw	
WELL DRILLING EQUIPMENT TAX		
388	Well drilling equipment tax bylaw	
CLEAN ENERGY IMPROVEMENT TAX		
390.3	Clean energy improvement tax bylaw	Requires Public Hearing

Section	Part and Title	Legislated Requirements
LOCAL IMPROVEMENT TAX		
397	Local improvement tax bylaw	
COMMUNITY AGGREGATE PAYMENT LEVY		
409.1	Community aggregate payment levy bylaw	
PART 11		
ESTABLISHMENT AND FUNCTION OF ASSESSMENT REVIEW BOARDS		
454	Assessment review boards to be established	
PART 13		
POWERS AND DUTIES OF BYLAW ENFORCEMENT OFFICERS		
556	Powers and duties of bylaw enforcement officers	
PART 15		
REGIONAL SERVICE COMMISSIONS - ESTABLISHMENT AND OPERATION		
602.07	Bylaws -- Regional Service Commissions	
PART 16		
MISCELLANEOUS		
606.1	Advertisement Bylaw	Requires Public Hearing
608.1	Bylaws for sending certain documents electronically	Requires Notice to Public in Manner Determined by Council

Section	Part and Title	Legislated Requirements
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PART 17

No bylaw under this Part is binding unless passed in accordance with this Part

PLANNING AUTHORITIES

623	Subdivision authority
624	Development authority
625	Intermunicipal service agency
626	Municipal planning commission
627	Appeal board established (SDAB)

INTERMUNICIPAL DEVELOPMENT PLANS

631	Intermunicipal development plan	Requires Public Hearing (s. 692)
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MUNICIPAL DEVELOPMENT PLANS

632	Municipal development plan (Mandatory for all municipalities)	Requires Public Hearing (s. 692)
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AREA STRUCTURE PLANS

633	Area structure plan	Requires Public Hearing (s. 692)
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AREA REDEVELOPMENT PLANS

634	Area redevelopment plan	Requires Public Hearing (s. 692)
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LAND USE

639	Land use bylaw	Requires Public Hearing (s. 692)
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DEVELOPMENT LEVIES AND CONDITIONS

REDEVELOPMENT LEVIES

648	Offsite levy	Requires Public Hearing (s. 692)
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SUBDIVISION OF LAND

658	Cancellation of plan of subdivision
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RESERVE LAND, LAND FOR ROADS AND UTILITIES

665	Designation of municipal land
670.2	Funding future reserves

Section	Part and Title	Legislated Requirements
672	Transfer of school and other reserves to municipality	
USE AND DISPOSAL OF RESERVE LAND		
676	Changes to environmental reserves' use of boundaries	Requires Public Hearing
PART 17.1		
GROWTH MANAGEMENT BOARDS		
708.23	Appeal or dispute resolution mechanism	
PART 17.2		
INTERMUNICIPAL COLLABORATION		
708.33	Method of creating framework	