

MGA Review Discussion Paper

Fundamental Changes and Municipal Restructuring

This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.

These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.

The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit mqareview.alberta.ca/get-involved.

Preamble

The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance and administration*; *assessment and taxation*; and *planning and development*.

This paper is one of 11 discussion papers exploring aspects related to the *planning and development* theme. It will explore issues related to the *MGA*'s provisions for annexations and other mechanisms for fundamental change. The objective of each discussion papers is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA*.

Below is a list of the papers that relate to the planning and development theme.

- Managing Growth and Development
- Statutory Plans and Planning Bylaws
- Municipal Planning Authorities
- Land – Administrative Decision-Making Processes
- Land Dedication (Reserves)
- Fees and Levies
- Public Participation
- Planning and Intermunicipal Appeals
- Municipal Government Board
- Municipal Relationships and Dispute Resolution
- Fundamental Changes and Municipal Restructuring

Fundamental Changes and Municipal Restructuring

The *MGA* outlines a variety of mechanisms to create or fundamentally change the boundaries or structure of a municipality. These mechanisms include: formation, change of status, amalgamation, annexation, and dissolution. The legislation specifies how each of these mechanisms is to be initiated and carried out, and outlines who holds the authority to ultimately make decisions, and the degree of public consultation required.

- **Formation:** is when a new municipality is established. The *MGA* outlines three ways in which the formation of a municipality can be initiated: by the Province's initiative, a municipal council request, or a petition from the public. After a series of considerations (of factors such as the financial stability of the proposed municipality and the location of potential municipal boundaries), the Province must invite comment from potentially impacted parties, such as neighbouring municipalities and the public, to discuss the probable effects of the formation. A vote may be held on a formation, if it is appropriate; however, the Province ultimately decides whether the new municipality may be created.¹
- **Change of Status:** is when a municipal district, village, summer village, town, city or specialized municipality changes its status to another type of municipality. A change in status is initiated through a municipality's request, a petition signed by the majority of residents in the municipality and submitted to the Province, or by the Province. Public input may be invited to better understand possible effects of the status change, but the Province ultimately decides on whether to change the status of a municipality.
- **Amalgamation:** is when two or more municipalities join together and form a new municipal authority. An amalgamation can be initiated by either the Province or a municipality. When a municipality initiates the request, there are a series of steps to be carried out, including: providing notice to the appropriate parties, proposing the amalgamation, and negotiating and reporting on the outcomes between municipalities. If the Province initiates the request, it follows a different series of steps, including sending out notices and gathering input from the affected municipalities and the public. Ultimately, the Province decides on whether an amalgamation can occur.
- **Annexation:** is when a municipality acquires additional lands from a bordering municipality.² Annexations can only be initiated by a municipality. An annexation is initiated by giving written notice of the intent to annex land, and direct negotiations are held between the initiating municipal authority and the municipal authority from which the land

¹ Ministerial Order L: 077/01 (approved in 2001) indicates that "the formation of a new municipal government should not be considered if it will result in an increase in the total number of municipal governments in Alberta."

² The process of "de-annexation" (i.e. a municipality annexes a portion of land back after it was annexed by a neighbouring municipality) can occur under the current legislation. There are few examples of this occurrence and typically involves two separate annexation applications.

is to be annexed. A report on the outcomes of the negotiations is sent to the Municipal Government Board (MGB). If the municipalities do not agree, or if there are objections from landowners, the MGB will hold a hearing at which the municipalities, landowners and other affected parties may make representation. The MGB subsequently prepares a report with its recommendations. A final decision on whether to approve an annexation is made by Cabinet.³

Dissolution: is when a municipality ceases to be an incorporated municipality and its land becomes part of another municipality. In May 2013, the *MGA* was amended to provide the legislative framework for one of the key components of the Municipal Sustainability Strategy – the new viability review process. The viability review process enhances the dissolution study process to better support Alberta’s smaller communities in addressing their long-term sustainability challenges. The new process involves a collaborative review of the community’s sustainability, the development of options for strengthening the community, and a public vote prior to any dissolution (where dissolution is identified as a desired option).

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³ There are very limited examples of the province not proceeding with the MGB recommendations. Prior to the establishment of the MGB in 1994, the Local Authorities Board was granted more discretion to make final decisions on annexation applications.

Discussion Points



Below are some discussion topics and questions identified during a review of requested amendments, cross-jurisdictional research and issues raised by stakeholders.

The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It is important to note these requests:

- i) do not necessarily represent the views of most Albertans;
- ii) do not necessarily apply to all municipalities; and
- iii) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

1. Principles of Annexation

Background:

The *MGA* allows the Province to establish a set of principles and criteria to use when considering annexations and other fundamental changes but these have not yet been established. In the absence of sanctioned principles, the Municipal Government Board (MGB) has informally developed and follows a set of 15 guiding principles when processing annexation applications and making recommendations after hearings (see Appendix A). The MGB may also consider intermunicipal development plans (IDPs)⁴, if present, when making recommendations on a proposed annexation on which no general agreement has been reached among affected parties. The MGB has created informal guiding principles in order to make recommendations.

Cross-jurisdictional Research:

- Under *The Municipal Act* in Manitoba, the Province may establish principles, standards or criteria to be considered in annexation proposals; these have not yet been established.

Stakeholder and Legislative Amendment Requests:

- Some developers have requested that the annexation process be amended:
 - to minimize disputes between urban and rural municipalities regarding future development;
 - to protect the interests of property owners and developers during mediation; and
 - to allow urban municipalities the ability to expand boundaries and to accommodate growth.
- The MGB has requested that the term “annexation” be defined to clarify provincial expectations regarding boundary changes.

⁴ IDPs can address future land use, development around boundaries, and conflict resolution between municipalities. IDPs are described further in the Statutory Plans and Planning Bylaws discussion paper.

2. Annexation Participation

Background:

When an annexation is initiated by a municipality, it must send notification to any local authority that the municipality considers would be affected by the annexation application. This means that it is up to the municipality to determine the other authorities who should be notified of the application. In the past, some other authorities have stated that they have not been notified or involved in the process until after the annexation has occurred. In some cases, an annexation could have an impact upon the services that are being offered to residents within the annexed area (e.g. school bussing) or upon the affected authorities (e.g. rural gas co-ops) who were previously providing services within the annexation area.

Stakeholder and Legislative Amendment Requests:

- Some school boards have requested that the *MGA* require municipalities to advise school jurisdictions of annexations.
- Some utility companies and some municipalities have requested that the *MGA* be amended to “create an equal opportunity” for rural gas co-ops to actively compete to retain franchise areas through contractual franchise agreements. These stakeholders indicate that rural gas co-ops may lose franchise territory to regulated utility companies when the land they are currently servicing is annexed to an urban municipality and thus the urban municipality automatically gives the franchise to the regulated utility within their boundaries.

3. Annexation Negotiation and Compensation

Background:

During the annexation process, municipalities are required to negotiate with one another and attempt to agree on conditions of the annexation. The *MGA* states that an annexation order may require compensation to be paid from one municipality to the other municipality. Recently, this provision of the Act has been utilized more frequently, and compensation for the loss of tax revenue and the reimbursement for road improvements or other infrastructure has been discussed more extensively as part of negotiations and MGB annexation hearings. The compensation amounts, as well as the reasoning behind the obligation for compensation, can potentially cause delays and complicate the negotiation process.

Cross-jurisdictional Research:

- Saskatchewan and Manitoba have a similar process to Alberta, where compensation can be negotiated, but it is not a legislated requirement.
- Some provincial legislatures have established tiered systems of local government as an alternative to frequent annexations.
 - British Columbia, Ontario and Quebec have tiered systems that include a regional level of government (in addition to the existing municipalities) in order to address issues for the whole area.⁵

⁵ More information on Ontario’s tiered system of local government can be found in Appendix B.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have requested that a penalty be established for frivolous or vexatious annexation requests.
- Some municipalities have requested that provisions be added to the annexation process that require the initiating municipality pay for all costs incurred by all involved municipalities in an annexation application.
- Some stakeholders have requested the *MGA* to be amended to ensure that prior to infrastructure improvements proceeding in an annexation area, that both municipalities support the improvements.

4. Contiguous Boundaries

Background:

The *MGA* requires land that is the subject of restructuring (e.g. annexation, amalgamation) are contiguous to the boundary of the municipality. This means that municipal restructuring cannot occur between municipalities whose boundaries are not directly adjacent. In other provinces, municipalities have the option, under certain circumstances, to restructure their boundaries with either a contiguous municipality or a non-contiguous municipality.

Cross-jurisdictional Research:

- In Manitoba and Saskatchewan, annexation can occur between non-adjacent municipalities if both municipalities make a voluntary and joint proposal for the annexation.
- In Manitoba, *The Municipal Act* allows “neighbouring municipalities” to amalgamate.

5. Timeframes for Annexations

Background:

The *MGA* does not set out a timeframe to be met by municipalities between the initial notice to the MGB and the submission of a completed annexation package. Also, there are no time requirements for the initiating municipality to meet with the neighbouring municipality to discuss the annexation proposal, or to subsequently report on those negotiations. Under the *MGA*, these negotiations must be completed during the annexation process; however, this can prove problematic when large time delays occur.

Cross-jurisdictional Research:

- Cross-jurisdictional research did not uncover any information regarding timeline requirements for municipalities preparing annexation packages.
- Saskatchewan’s Municipal Board Boundary Committee makes a decision or submits its recommendation to the Minister within four months after the date an annexation application is submitted or referred to the committee

Stakeholder and Legislative Amendment Requests:

- The MGB has requested that the *MGA* be amended to direct municipalities to provide all annexation-related intermunicipal agreements prior to the MGB making its recommendation, as well as to clarify when the annexation process actually starts.

6. Public Involvement in Annexation Decisions

Background:

The *MGA* specifies that annexation applications are to be sent to the MGB. Generally, public concerns are taken into consideration without a public hearing when the application is being processed. However, a single objection to a proposed annexation can trigger a public hearing, and annexation applications that result in public hearings are becoming increasingly more common. Since 2010, the MGB has received 33 annexation applications with more than half of the applications (17) requiring the board to conduct a public hearing. Almost all of these public hearings (15) were a result of objections from affected landowners.

Cross-jurisdictional Research:

- In British Columbia, the majority of people living in the expansion area must consent to a proposed annexation. The citizens of the municipality annexing the land can object and a referendum may be required.
- In Manitoba, a public hearing is required if the municipalities cannot agree or if a minimum of 25 people object.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have requested that when a notice of appeal is deemed by the MGB to be “frivolous or vexatious,” no further action shall be taken to proceed with the appeal.
- Some stakeholders have expressed concern on MGB’s familiarity with local issues.
- Some stakeholders have expressed concern on the ability of landowners or other speakers not immediately adjacent to the annexed land to express their concerns at MGB hearings.

7. Fundamental Changes

Background:

The *MGA* describes a variety of mechanisms available for municipalities to fundamentally change their boundaries or structure. Municipalities may choose to consider different mechanisms depending on the needs of their community. Either amalgamation or dissolution processes may be considered by municipalities if they believe that operating as one municipality (rather than as separate jurisdictions) will lead to more effective or efficient municipal operations. Amalgamation processes are often initiated collaboratively and voluntarily; however, dissolutions have historically involved a single municipality initiating the dissolution process in order to dissolve into a surrounding municipality. The end result of both amalgamation and dissolution are structurally the same – two or more municipalities combine into one municipality.

Cross-jurisdictional Research:

- Some provinces are using mechanisms to encourage regional partnerships:
 - British Columbia, Ontario, Newfoundland/Labrador, and New Brunswick are providing grants and other incentive programs to encourage municipalities to amalgamate.
 - In Manitoba, municipalities that do not meet the minimum 1,000 population that is necessary to be recognized as a municipality under *The Municipal Act* will be required to develop a plan that ensures they meet the 1,000 minimum population requirement.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have requested that transitional funding for municipal districts and counties be reinstated to help them cover the cost of aging infrastructure and debt in absorbing a dissolved municipality.
- Some stakeholders have requested that the province provide incentives for the restructuring of municipalities who are found to be financially unviable.

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Discussion Questions

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1. The MGA provides for formations, annexations, amalgamations, and dissolutions; are the tools and mechanisms appropriate to address relationships between municipalities, the viability of communities, and good governance? Why or why not?
 2. How should the term “annexation” be defined?
 3. What should the principles of annexation reflect? Should the principles that guide annexations be entrenched in legislation? Why or why not?
 4. What types of matters should be considered during negotiations and decisions (e.g. compensation, transfer of land)? Should guidelines be established? Why or Why not?
 5. Should restructuring (e.g. annexations and amalgamations) only occur between municipalities with contiguous boundaries? If not, under what circumstances should non-contiguous restructuring occur?
 6. At what point should the annexation process start? Should specific timelines be applied to the annexation process? If not, why not? If so, to which stages of the process should timeframes be attached, and how long should those timelines be?
 7. Should the *MGA* place minimum requirements on the number of public complaints that can trigger a public hearing in an annexation application? Why or why not?
 8. How can the *MGA* ensure that legislated processes are complied with?

Appendix A: Municipal Government Board (MGB) Annexation Principles

In the absence of criteria authorized by section 76 of the *MGA* and in order to deal with the various issues raised by the affected parties, the landowners and the interest groups, the MGB has developed a series of annexation principles. The MGB has developed these principles from the examination of the annexation provisions in the *MGA*, the Provincial Land Use Policies and previous annexation orders and recommendations. In summary, these principles include the following:

- 1) Annexations that provide for intermunicipal cooperation will be given considerable weight. Cooperative intermunicipal policies in an intermunicipal development plan will be given careful consideration, weight and support so long as they do not conflict with Provincial policies or interests.
- 2) Accommodation of growth by all municipalities (urban or rural) must be accomplished without encumbering the initiating municipality and the responding municipality's ability to achieve rational growth directions, cost effective utilization of resources, fiscal accountability and the attainment of the purposes of a municipality described in the Act.
- 3) An annexation or annexation conditions should not infringe on the local autonomy given to municipalities in the Act unless provisions of the Act have been breached or the public interest and individual rights have been unnecessarily impacted.
- 4) An annexation must be supported by growth projections, availability of lands within current boundaries, consideration of reasonable development densities, accommodation of a variety of land uses and reasonable growth options within each municipality (initiating and responding municipality).
- 5) An annexation must achieve a logical extension of growth patterns, transportation and infrastructure servicing for the affected municipalities.
- 6) Each annexation must illustrate a cost effective, efficient and coordinated approach to the administration of services.
- 7) Annexations that demonstrate sensitivity and respect for key environmental and natural features will be regarded as meeting provincial land use policies.
- 8) Coordination and cost effective use of resources will be demonstrated when annexations are aligned with and supported by intermunicipal development plans, municipal development plans, economic development plans, transportation and utility servicing plans and other related infrastructure plans.

- 9) Annexation proposals must fully consider the financial impact on the initiating and responding municipality.
- 10) Inter-agency consultation, coordination and cooperation is demonstrated when annexations proposals fully consider the impacts on other institutions providing services to the area.
- 11) Annexation proposals that develop reasonable solutions to impacts on property owners and citizens with certainty and specific time horizons will be given careful consideration and weight.
- 12) Annexation proposals must be based on effective public consultation both prior to and during any annexation hearing or proceedings.
- 13) Revenue sharing may be warranted when the annexation proposal involves existing or future special properties that generate substantive and unique costs to the impacted municipality(s) as part of the annexation or as an alternative to annexation.
- 14) Annexation proposals must not simply be a tax initiative. Each annexation proposal must have consideration of the full scope of costs and revenues related to the affected municipalities. The financial status of the initiating or the responding municipality(s) cannot be affected to such an extent that one or the other is unable to reasonably achieve the purposes of a municipality as outlined in section 3 of the Act. The financial impact should be reasonable and be able to be mitigated through reasonable conditions of annexation.
- 15) Conditions of annexation must be certain, unambiguous, enforceable and be time specific.

Appendix B: Ontario's Municipal Government System

Municipal Act

The *Municipal Act* is a consolidated statute governing the extent of powers and duties, internal organization and structure of municipalities in Ontario.

The current *Municipal Act*, which took effect on January 1, 2003, represents the first comprehensive overhaul of Ontario's municipal legislation in 150 years and is the cornerstone of a new, stronger provincial-municipal relationship. Effective January 1, 2007, the *Municipal Act*, 2001 (the Act) was significantly amended by the Municipal Statute Law Amendment Act, 2006 (Bill 130).

Municipal Council

Municipalities are governed by municipal councils. The job of municipal councils is to make decisions about municipal financing and services. In Ontario, the head of a local (lower or single tier) municipal council is either called the mayor or the reeve. The members of council may be called councillors or aldermen.

How are Municipal Councillors Elected?

The way councillors are elected differs from municipality to municipality. Municipal councillors may be elected at large or by ward.

In a municipality where the councillors are elected at large, all councillors represent the entire municipality. In an election, the voters choose among all candidates who are running in the election. If municipal council has 8 councillor positions, for example, the 8 candidates with the highest number of votes win the election and become the new councillors.

Other municipalities are divided into wards. Depending on the municipality, each ward may have one, two or more representatives on council. Voters in each ward can choose only among the candidates who are running for election in that ward. For example, if a municipality has 8 council members and 4 wards, 2 councillors will be elected from each ward. Each voter chooses 2 candidates from among the candidates running in that ward. In each ward, the two candidates with the highest number of votes will serve on municipal council. The members of council may be called councillors or aldermen.

How is the Head of Council Elected?

The head of council is always elected at large by all of the voters in the municipality. In Ontario, the head of a local (lower or single tier) municipal council is either called the mayor or the reeve.

What about County Council?

The head of a county council is called a warden. The county council is composed of designated elected members from the lower tier municipalities. The county council itself selects the warden from among its members

What about Regional Councils?

The head of a regional council is called a Regional Chair. The chair is chosen by a vote of the members of regional council or directly elected.

Other members of regional council are selected in various ways. Some are elected directly by the voters to sit on regional council. Some are elected to sit on both the regional council and the local municipal council. In some municipalities, members of local municipal councils are appointed by their councils to serve at the regional level. The head of council of a local municipality is a member of the regional council.

Municipalities in Ontario

The current number of municipalities in Ontario is 444. How are these municipalities structured? It can vary.

Local Municipalities

Depending on its size and its history, a local municipality may be called a city, a town, or a township or a village. They are also referred to as "lower tier" municipalities when there is another level of municipal government like a county or region involved in providing services to residents. There are a number of separated towns and cities in Ontario although and they are geographically part of a county, they do not form part of county.

Where there is only one level of municipal government in an area, it is called a single tier municipality. Examples of single tier municipalities: City of Chatham-Kent, City of Greater Sudbury, City of Hamilton, City of Ottawa and the City of Toronto.

Counties, Regions and Districts

Sometimes it is legislated or more efficient to provide certain services over an area that includes more than one local municipality. For this reason, counties (mainly in rural areas) or regions may be involved in providing services to residents and businesses.

A county or regional government is a federation of the local municipalities within its boundaries. District is another name that is sometimes used in Ontario. Only the District Municipality of Muskoka provides services on a regional-scale. Areas may use the term district but these are territorial boundaries that do not serve any municipal government purpose. Counties, regions and the District of Muskoka are referred to as "upper tier" municipalities.

Northern Ontario

The unique characteristics of Northern Ontario have given rise to distinctive ways of providing services at the local government level as well.

In Northern Ontario, there are cities and towns. Northern Ontario municipalities are all single tier municipalities. There are also administrative ways of providing services to huge areas of land that have very few people in what are called "unincorporated" areas of Northern Ontario. District Social Service Administration Boards are a good example through which certain social services are delivered to Northern residents. Area Service Boards are another new approach that is possible. They can provide a means to deliver a range of municipal services across a broad geographic area.

Municipal Amalgamations

The provincial government encourages municipal governments to amalgamate with a view that municipal government provides services in the most cost-effective and efficient way possible. Some local governments joined together voluntarily to achieve sustainable services and municipal infrastructure. In other cases, the province had facilitated amalgamations of municipalities through restructuring commissions and special advisors.

In the mid-1990's, expansion of urban areas, changes in responsibilities of local government and provincial government initiatives had led to a massive wave of municipal mergers. The most important changes saw some counties and regional municipalities merge with their constituent local municipalities. As a result, the number of municipalities was reduced by more than 40 per cent between 1996 and 2004, from 815 to 445. In January of 2009, that number went to 444.

Amalgamations happened in Northern Ontario as well. There are no counties in the north. The typical amalgamation in the north involved the amalgamation of one or two municipalities and annexation of unincorporated territory.

A provincial governance review of four regions had resulted in the creation of 5 single tier municipalities: the Cities of Ottawa, Greater Sudbury, and Hamilton; and the Towns of Haldimand and Norfolk.

Reference:

"How Municipal Government Works." www.amo.on.ca/AMO-Content/Municipal-101/How-Municipal-Government-Works.aspx. Association of Municipalities Ontario, n.d. Web. 10 October 2013.