

MGA Review Discussion Paper

Public Participation

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 mgareview.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 the issues related to the provisions for public participation in municipalities as described in the *MGA*. The objective of each discussion paper 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

Public Participation

A number of sections in the *MGA* are intended to ensure that citizens are provided with the opportunity to be involved in municipal decision-making processes. The *MGA* uses the term “public participation” for its provisions in relation to petitioning and public hearings, and additional sections throughout the Act address the relationship between a municipality and its citizens.¹ The legislation recognizes the need for communication and consultation among the municipality and the parties or organizations that could be affected by a decision.

The mechanisms for public participation that are currently provided in the *MGA* include:

- Open Meetings: Municipalities are required to hold all their council and committee meetings open to the public, with some exceptions in instances where, for example, disclosure may be harmful to business interests, personal privacy, individual safety, public safety, etc., as defined in the *Freedom of Information and Protection of Privacy Act (FOIP)*. In these instances council will go “in-camera” to hold the discussion and will return to public forum once the discussion is completed.
- Notices and the Right to Be Heard: A citizen’s right to receive notice of certain matters to be considered by a municipal council is an integral part of various decision-making processes outlined in the *MGA* (e.g. statutory plan amendments, road closures, etc.). In most cases, notice is provided through advertising or written notices delivered directly to affected citizens.

During these decision-making processes, citizens also have the right to be afforded the opportunity to participate in discussions. Some of these processes, to name a few, relate to:

- the change of status or boundaries of a municipality through the formation, dissolution, amalgamation or annexation of municipalities;
 - public hearings for proposed bylaws or resolutions (e.g., land use bylaws); and
 - appeals of subdivision or development applications.
- Access to Information: The public can request any information from their municipality. In some cases the municipality is obligated under legislation to provide the information (e.g. salaries of chief administrative officer and councillors) and, in other cases, the public may need to file a request under the FOIP Act to receive the information.

¹ Regulations that provide further guidance around public participation include the Subdivision and Development Regulation and the Planning Exemption Regulation.

- Petitions: Citizens can petition council to allow for a vote on an advertised bylaw or resolution, to create a new bylaw, or to amend or repeal an existing bylaw or resolution. Citizens can also petition the Minister to conduct an inquiry into the affairs of a municipality. The *MGA* sets out processes to be followed by petitioners, and by the municipality or province in determining that a petition is valid. Some matters are not subject to petitions, including bylaws that deal with financial matters (with the exception of borrowing bylaws), road closures, planning bylaws, assessment and taxation (with the exception of local improvement taxes).

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Discussion Points

Below are some identified discussion topics and questions based on 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. Public Involvement

Background:

The *MGA* contains provisions for citizen engagement and involvement. Members of the public are increasingly expressing their thoughts and concerns about the actions of municipal administrations and decisions of municipal councils, to request information about council decisions, and to expect openness and transparency in administrative and political processes.

As a result, most municipalities go above and beyond the minimum requirements set out in the *MGA* to notify and involve citizens in public hearings. However, approaches vary among municipalities. Some say that the *MGA* should provide greater opportunity for public participation.

Cross-Jurisdictional Research:

- In Nova Scotia, municipalities must adopt, by policy, a public participation program to be followed when preparing planning documents. The public participation program must be completed prior to advertising the first notice of the public hearing. Additionally, public hearings must be held before second reading of the planning bylaw.
- In New Zealand, the *Local Government Act* lays out principles for consultation that a local authority must utilize when undertaking consultation.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have requested the *MGA* be amended to require greater citizen involvement within planning processes.

2. Notices

Background:

In instances where notification of citizens is required by the *MGA*, these notices are typically provided by municipalities through direct mailings or hand delivery to affected citizens, or through newspaper publications. With local newspapers becoming scarcer, especially in smaller communities, it is becoming increasingly difficult to meet the requirements of the *MGA*.

Cross-Jurisdictional Research:

- In Saskatchewan, municipalities may pass a public notice policy bylaw. This bylaw must include the minimum notice requirements, methods of giving notice and contents of the notice. The bylaw also has to be provided to the Minister of Municipal Affairs.

Stakeholder and Legislative Amendment Requests:

- Some urban municipalities have requested amendments to the *MGA*'s notification requirements to allow for a shorter notification period if the notice is published in more than one newspaper.
- Some municipalities have requested the flexibility to utilize new technologies for notification, in order to address a lack of local newspapers.

3. Petitions

Background:

The *MGA* specifies matters that can and cannot be petitioned, and the process for review of petitions that have been submitted to the municipal council or the Minister. It can be a challenging task for citizens to undertake and submit a petition. The *MGA* sets out precise requirements to be met by electors who organize and sign the petition and, if details are missing, the petition can be declared insufficient. In most situations, sufficient petitions require signatures from eligible voters equal in number to at least 10 per cent of the population of the municipality (in the case of a summer village, 10 per cent of the electors) and typically must be completed within 60 days. Due to these minimum population requirements it may be more difficult for a petition to be declared sufficient in larger municipalities.

Cross-Jurisdictional Research:

- B.C., Saskatchewan, Manitoba, Quebec and the Yukon, all have non-binding principles for petitions. This means that councils can receive and consider petitions, but are not obligated to undertake anything contained within the petition.
- In Manitoba, if a petition is declared insufficient by the CAO, the petition may be re-filed within 30 days.

- In other jurisdictions such as New Brunswick or the Northwest Territories, a plebiscite or petition can force council to pass bylaws. In New Brunswick a plebiscite must have the support of 60% of the votes cast. In the Northwest Territories, the petition must contain signatures from a minimum of 25% of the voters in the municipality.

Stakeholder and Legislative Amendment Requests:

- Municipal Affairs has received a number of calls from municipal councils requesting greater restrictions be placed on petitions (e.g. suggesting that petitions should not apply to necessary local improvements, and to place moratoriums on re-petitioning, etc)
- Some municipalities have requested the *MGA* limit how frequently a ratepayer's petition can be filed (e.g. once every 10 years).
- Some municipalities have requested the *MGA* adopt the following process when a petition is received:
 - hold a public hearing;
 - allow petitioners to have their names officially removed from the petition following the public hearing; and,
 - provide a time period after the public hearing to give petitioners time to choose whether to pursue the petition further.
- Some municipalities have requested the *MGA* grant the Chief Administrative Officer authority to examine the Affiant (the person who makes the Affidavit) on petition witness affidavits, pursuant to the Alberta Rules of Court.
- Some municipalities have requested the Province amend the *MGA* to include provisions to exclude the name of a person who provides a statutory declaration to the Chief Administrative Officer that their signature was:
 - not witnessed in accordance with section 224 of the *MGA*;
 - provided after receiving inaccurate information regarding the petition;
 - provided under duress;
 - provided while the petitioner was in an intoxicated state; or
 - forged
- Municipal Affairs has received citizens' requests that fewer restrictions be placed on how petitions are used (e.g. suggesting that the public should be allowed to petition for a referendum, that petitions should be allowed on land-use matters, etc.).
- Citizens have requested the Province amend the *MGA* to make the petition requirements simpler and include a regulation that clearly stipulates the manner in which petition signatures are validated.
- Citizens have requested the Province amend the *MGA* so that 10% of the voting population is the standard for initiating a petition in Alberta (as opposed to the current 10% of the total population).

4. Public Hearings

Background:

Public hearings are an opportunity for residents to make representations to municipal councils. The *MGA* does not give guidance to councils on how to use the information received in public hearings in their decision-making, and does not require councils to provide reasons for their decisions. Some citizens perceive that their councils may not be taking into consideration the presentations made at public hearings prior to passing controversial bylaws or resolutions.

Cross-Jurisdictional Research:

- In New Zealand, the *Local Government Act* lays out principles that a local authority must utilize when undertaking consultation. Within these principles there are two in particular that pertain to how the municipality must consider the views of the public within the decision:
 - The views presented to the local authority should be received by the local authority with an open mind and should be given due consideration by the local authority when making its decision; and,
 - The local authority should provide the people who have presented their views, the decision and the reasons for the decision.

Stakeholder and Legislative Amendment Requests:

- Some citizens have requested the Province amend the *MGA* to require reasons for decisions issued by municipalities.

5. Lobbying

Background:

In 2007, the Province introduced the *Lobbyists Act* to give Albertans public access to information regarding individuals and organizations seeking to influence provincial government decisions, and to enhance transparency, openness, accountability and public trust in the government. The *Lobbyists Act* relates to those engaged in lobbying the provincial government. There is no legislation to address lobbying by citizens or businesses to municipalities.

Cross-Jurisdictional Research:

- Legislation in Ontario allows municipalities to establish and maintain a registry of groups who lobby public office holders. The City of Toronto has created a lobbyist registry under the authority of this legislation.

Discussion Questions

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1. How should the expectations of municipalities and citizens for public engagement be clearly defined?
 - a) Should municipalities be required to prepare public participation plans? If so, what would these plans contain?
 2. What should be the statutory requirements for notifications (e.g. method of notice, timing, technology)? And who should set those requirements?
 3. Is the current petition process an effective and practical tool for public participation (e.g. scope, contents, population requirements, timing, size of municipality)? If not, how could it be improved?
 4. Are the current *MGA* provisions for the public hearing and decision process adequate for hearing and considering the concerns of the public? If not, what could be changed and why?
 5. Should the *MGA* contain provisions regarding lobbying by the public and industry to municipalities? If so, what parameters should be established?