

## MGA Review Discussion Paper

# Compliance and Accountability

*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](http://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*; *assessment and taxation*; and *planning and development*.

This paper is one of 12 discussion papers exploring aspects related to the *governance* theme. It focuses on the compliance and accountability provisions in the *MGA*. 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 governance theme.

- Municipal Powers
- Provincial Powers
- Municipal Structures
- Municipal Governance
- Municipal Administration
- Financial Administration
- Liability and Risk Management
- Service Provisions
- Controlled Corporations
- Regional Service Commissions
- Compliance and Accountability
- Special Areas and Improvement Districts

## Compliance and Accountability

The *MGA* allows for flexibility in local governance decisions and actions. There are however, legislative requirements (or rules) which municipalities, the provincial government, and the courts are required to follow to ensure a fair system. This discussion paper examines the scope and appropriateness of the *MGA*'s legislative requirements from a compliance and accountability perspective.

*Compliance* can be defined as adherence to obligations in the *MGA*; examples of obligations are found in those sections imposing a duty on a person, which often contains the words "must," "shall," and "may not." *Accountability* statements identify to whom those obligations fall and how compliance is enforced (e.g., fines, court rulings, appeal processes).

More than 600 provisions in the *MGA*, and its regulations, relate to obligations and enforcement. These provisions place responsibilities on a variety of persons and entities to define how and to whom those with responsibilities are accountable and their degree of accountability. Those affected include:

- Municipalities – accountable to the electorate and the province;
- Designated officers (chief administrative officer, clerk, etc.) – accountable to the municipality;
- Council – accountable to the electorate and the Minister; and
- Citizens/business – accountable under bylaws made by councils.

The *MGA* creates a range of legislated obligations, such as preparing assessment rolls, municipal budgets, reviewing petitions, bylaw enforcement, establishing frameworks for appeals, requiring financial reporting in key areas and other legislated requirements.

Monitoring and enforcement are required for achieving an effective compliance and accountability framework. Two key types of enforcement are present in the existing accountability framework:

- 1) *Complaints processes*– Individuals, municipalities, and other organizations may bring complaints or appeals to administrative tribunals and the courts. Examples include citizens applying to disqualify council members, construction injunction applications by municipalities, and property assessment complaints by property owners.
- 2) *Monitoring and Enforcement* – The *MGA* gives the province and municipalities authority to monitor and enforce a range of legislated obligations. Examples include the municipal enforcement of bylaws and the province's ability to enquire into the affairs of a municipality or a regional services commission.

## 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 important to note these requests:

- i) do not include all the requests Municipal Affairs has received in the past 18 years;
- ii) do not necessarily represent the views of most Albertans;
- iii) do not necessarily apply to all municipalities; and
- iv) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

### 1. Areas of Municipal Accountability

#### *Background*

The current *MGA* focuses primarily on a municipality's accountability to the local electorate, such as making audited financial statements publicly available, and advertising public hearings. The current *MGA* also includes various provisions for accountability to the province (e.g., financial reporting, inspections and directives).<sup>1</sup> While there are no electoral accountabilities from council to other stakeholders in the *MGA*, there is an underlying expectation that municipal councils will give consideration to the interests of local businesses, industry, and neighbouring municipalities.

#### *Cross-jurisdictional research*

- All Canadian provinces require municipalities to submit audited financial statements. In addition some provinces include reports on municipal performance measures, grant usage, and expenses for council and/or administration.

#### *Stakeholder and Legislative Amendment Requests*

- Municipal Affairs has received a number of calls from citizens and business owners requesting greater accountability from their municipalities:
  - Citizens often ask for greater accountability and oversight within the subdivision and permitting process (e.g. citizen requests for the right to appeal subdivision and land use bylaw decisions);
  - Business owners often ask for greater consideration when municipal decisions may affect their business and request better transparency in the tracking of how municipalities spend development fees they receive (e.g. off-site levies, cash-in-lieu of reserve).

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<sup>1</sup> Accountability to the Province is discussed in the Provincial Powers paper.

## 2. Public Accountability and Enforcement

### *Background*

The *MGA* facilitates a council's accountability to its citizens through the following:

- *Legislative requirements* – the *MGA* contains requirements for general elections, decisions to be made in public, and financial reporting to be made public;
- *Petitions* – the *MGA* allows electors to petition council for a vote of the electors on certain bylaws and to petition the Minister of Municipal Affairs for an inquiry into the affairs of a municipality, the conduct of council, or the conduct of a person who is acting on behalf of a municipality;
- *Provincial tools* – municipal inspections and ministerial directives can facilitate greater public accountability; and
- *Appeals* – the *MGA* allows citizens to appeal certain decisions to a range of local and provincial boards and tribunals.

These measures are intended to ensure that citizens have adequate input into municipal processes.

### *Cross-jurisdictional Research*

- Ontario's Municipal Act contains an entire part on Transparency and Accountability. This part outlines:
  - Arm's length municipal positions that use a legislated code of conduct to monitor and publicly report on the ethics and actions of Council, administration, and a variety of municipal boards and corporations;
  - how lobbyist information will be made available to the public; and
  - the creation of an ombudsman for the investigation of a municipality's decisions and actions.
- Five provinces and one territory have ombudsmen with the authority to investigate whether a municipality is following formalized local or legislated processes.
- Municipal acts across Canada vary in their approach to petitions, plebiscites and referendums. On one end of the spectrum (e.g. Saskatchewan and Manitoba) a council chooses if it will consider petitions (or use plebiscites) and may do so only for the purposes of gauging voter opinion. On the other end of the spectrum (e.g. New Brunswick and Nunavut) these petitions and plebiscites can dictate a variety of municipal decisions.

### *Stakeholder and Legislative Amendment Requests*

- Citizens regularly ask Municipal Affairs if there is an ombudsman or some other body with which they may raise concerns.
- Municipal Affairs has received a number of calls from councils requesting that limitations be placed on petitions (e.g. petitions should not apply to necessary local improvements, place moratoriums on re-petitioning) while citizens often request fewer restrictions on how petitions are used (e.g. allow the public to petition for a referendum, allow petitions on land-use matters).

### 3. Enforcement

#### *Background*

The MGA's focus on municipal autonomy means that enforcement occurs primarily at the local level through the council, local appeal boards, or the courts. In certain situations, the province may step in to address a situation (e.g. through a municipal inspection, by appointing an Official Administrator, or dismissing councillors etc.) Municipalities and citizens have a number of monitoring and enforcement tools at hand to address a situation and hold another party responsible. However, inconsistent monitoring at the local level may create situations where accountability becomes difficult to monitor or enforce.

#### *Cross-jurisdictional Research*

- In all provinces and territories the Minister has significant powers relating to municipal finance (e.g. required audits, overriding financial decisions, approving municipal budgets) and municipal governance (e.g. dismissing councillors/administrators, appointing staff to supervise council).
- Newfoundland, Manitoba, and Saskatchewan allow the Minister to withhold some funds intended for a municipality as a compliance mechanism.

#### *Stakeholder and Legislative Amendment Requests*

- Municipal Affairs has received citizen requests to reduce the level of authority a provincially appointed Official Administrator may have over a municipality and its council.

### 4. Appeal Accessibility and Engagement

#### *Background*

The complaints-based enforcement system often has fees attached to the filing of a complaint or appeal, be it with the courts or an administrative tribunal. While these fees help pay for the services provided and ensure the system isn't misused, sometimes these fees have become significant. Further, other costs can become significant, especially when a matter is brought into the court system, or legal representation becomes essential, or both. Often, the cost of legal proceedings exceeds what most citizens can afford. These costs can result in individuals, organizations, and in some cases municipalities not being able to access the legal system. This can result in individuals, organizations, and municipalities disengaging; something which undermines the effectiveness of the complaints-based enforcement system and the ability of various stakeholder groups to hold others accountable.

#### *Cross-jurisdictional Research*

- A 1998 Supreme Court ruling which developed out of a challenge to Ontario legislation states that a fee must be reasonably connected to the cost of the service.

#### *Stakeholder and Legislative Amendment Requests*

- Municipal Affairs has fielded a number of complaints from citizens that the costs required when pursuing certain enforcement measures (e.g. appeals, legal challenges) create a system that is inaccessible to the average citizen.
- Some citizens assert that certain stakeholders are not concerned about accountability if those taking them to task cannot afford the cost of a legal challenge

## Discussion Questions

1. *In what instances does accountability need to be enhanced, relaxed or remain the same?*
  - a) What public tools, if any, (e.g. petitions, plebiscites, elections) are appropriate for citizens to hold their municipalities accountable?
2. *What other measures could be explored to facilitate public accountability prior to engaging the court system (e.g. municipal ombudsman)?*

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