MGA Review Discussion Paper

Fees and Levies

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 & 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 municipal fees and levies 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

Fees and Levies

In addition to taxation, fees and levies are a source of revenue for a municipality. A fee is a charge to whoever is accessing a service provided by a municipality (for example, residents of many municipalities pay fees for their use of water). Under the current *MGA,* municipalities are able to charge fees for a variety of items, including fees:

- for any licences, permits or approvals established in municipal bylaws. These fees may be set at a higher rate for persons or businesses who do not reside or maintain a place of business in the municipality;
- for appealing property assessments;
- for any matters pertaining to planning and development;
- for matters established under a municipality's land-use bylaw;
- for using former forestry roads; and
- for a utility providers right to operate within a municipality's boundaries (franchise fees). These fees are paid by the utility provider and are identified on consumer utility bills.

A levy is a charge imposed by a municipality, typically to developers or owners of property in a designated area (depending on the type of levy), for a specific intended improvement. The *MGA* provides for a range of municipal levies, including the:

- Community Revitalization Levy (CRL) – This type of levy can be used for funding infrastructure and other costs associated with the redevelopment of property within a CRL area established through a regulation by the province. Once the regulation is established, the municipality uses revenues collected through increases in property assessment in the CRL area to help cover the costs of redevelopment. Any taxes collected from the increased assessments, including municipal taxes and education taxes, are deposited into a specific fund for financing the infrastructure projects that have been identified within the CRL plan.
- Community Aggregate Levy – A council may by bylaw impose a levy on sand and gravel pits operating within the municipality to raise revenue for infrastructure and other costs.
- Redevelopment Levy – If a municipality has adopted an area redevelopment plan, it may adopt a redevelopment levy to pay for land for parks, schools, or new or expanded recreation facilities.
- Off-Site Levy – A municipality may adopt an off-site levy bylaw to be applied at the time of subdivision or development to pay for capital costs for any of the following new or expanded facilities: water service, sanitary sewage, storm sewer drainage, roads required for the subdivision or development, and land required for those capital improvements.

- Subdivision and Development Levies – As a condition of a development permit or subdivision approval, applicants may be required to pay for access to roads, walkways, public utilities, parking and loading facilities, as well as off-site or redevelopment levies. Additionally, municipalities have the ability to require, through agreement, that applicants for subdivision or development permits construct or pay for improvements which are larger than what is required for the proposed development (e.g., larger capacity wastewater systems).

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.[1] 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. The Cost of New Development

Background:

The *MGA* identifies the types of levies that can be collected by municipalities and what the levies can be used for (e.g water and wastewater facilities). Generally, the purpose of most types of levies is to pay for costs of new development within municipalities. The current system requires that these costs be funded either by developers or by the municipality. As a result of growth in many communities, there may be a greater demand upon municipalities from their residents, to have more community facilities and to provide additional services that are outside the scope of what can be collected through these levies (e.g. residents would like to have more recreation facilities). Municipalities either have to borrow to pay for these extra services in new developments, attempt to collect money through voluntary agreements with developers, or fund them through general revenue.

Cross-jurisdictional Research:

- Development levies/charges are only authorized by legislation in Yukon, Nova Scotia, Ontario, Saskatchewan and British Columbia.
- In B.C., development levies can be collected to help pay for capital expenses that are tied to new developments. Capital expenses include sewage, water, drainage, highway facilities and providing or improving park land.
- In Ontario development charges may be charged to pay for increased capital costs due to development. The *Development Charges Act* does not identify the types of capital improvements that development charges can be collected on, but it does identify what isn't considered a capital cost. This includes cultural or entertainment facilities, tourism facilities, hospitals, acquiring land for parks, waste management services, or headquarters housing municipal or local board administration.
- In Saskatchewan, levies can be used to cover capital costs related to sewers, roads, parks, recreational facilities and water and drainage.

[1] Some of the issues pertaining to levies that are identified in this paper are the topic of an ongoing stakeholder discussion process initiated by Municipal Affairs.

Stakeholder and Legislative Amendment Requests:

- There have been numerous requests to amend the scope of what levies can be used to pay for. For example:
  - Municipalities have requested amendments to offsite levy provisions to include new or expanded facilities for fire rescue service, emergency medical service, police service, transit service, and recreation and library services to the list of capital costs. This would expand municipal authority to impose an off-site levy to assist them with serving and completing new communities.
  - Urban municipalities have requested the Province provide specific authority for municipalities to charge a general transportation impact levy as a condition of subdivision or development to offset some of the transportation related costs directly associated with new developments. The monies collected could be used to fund transportation infrastructure requirements elsewhere in the community which municipalities assert better addresses new growth impacts to the municipality as a whole.
- Additionally, there have been numerous requests from the business and development industry to not amend the list of uses that levies can pay for. For example:
  - Developers and Home builders have requested the Province find an alternative method to pay for new municipal infrastructure than off-site levies.
  - Developers and Home builders have requested amendments to prohibit off-site levy charges on infrastructure other than expanded arterial roads and underground utilities (as these costs result in more expensive housing and decreased marketability).

2. Off-Site Levy Bylaws and Calculating Costs

Background:

The *MGA* outlines the process for municipalities to follow in creating an off-site levy bylaw. The Principles and Criteria for Off-Site Levies Regulation outlines the process for municipalities to follow when determining the off-site levy costs to be included in an off-site levy bylaw. This includes negotiating the levy in "good faith" and provisions for consulting with affected landowners and developers when calculating the levy. Business, industry and residents have indicated that they want to be more involved and have more transparency during the creation of off-site levy bylaws, in the calculation of off-site levy costs for proposed developments, and to see that the money collected is utilized for the purpose(s) identified within the bylaw. Apart from Council, the Courts are the only recourse available for those who object to the way in which an off-site levy has been calculated by a municipality.

Cross-jurisdictional Research:

- In Ontario, municipalities are required to conduct a background study on development charges and hold a public hearing before adopting a levy bylaw. Also, the bylaw can be appealed to the Ontario Municipal Board. Additionally complaints about the amount being charged can be heard by municipal council, who can alter the amount, if necessary.

Stakeholder and Legislative Amendment Requests:

- Some municipalities have requested that the *MGA's* offsite levy bylaws procedures be amended to reference "consultation" rather than "negotiation".
- The development industry has requested the *MGA*'s offsite levy bylaw procedures be amended to:
  - Determine whether specific infrastructure projects, for which the levy has been raised, must be identified in the bylaw along with its tendered or constructed costs;
  - Detail contents of the levy bylaws within legislation;
  - Require a public hearing for off-site levy bylaws;
  - Allow for the right of appeal of an off-site levy bylaw to the MGB; and,
  - Require more input and collaboration between developers and municipalities in determining levy and infrastructure requirements.

3. Levies in Redevelopment Areas

Background:

In some circumstances, a municipality may be responsible for the full costs of upgrading roads, water and wastewater facilities in areas undergoing redevelopment. The *MGA* states that off-site levies may be collected by municipalities for use in providing roads, water or wastewater facilities, but these levies may only be collected once on land that is the subject of a development or subdivision. The *MGA* states that a redevelopment levy may be collected with respect to a development in a redevelopment area, but this levy is for use in providing land for schools, parks, or recreation facilities – not for core infrastructure such as roads. Therefore, if off-site levies have previously been collected for an area, and due to the limited uses of redevelopment levies, the costs of infrastructure upgrades in the redevelopment area may fall solely to the municipality.

Cross-jurisdictional Research:

- In British Columbia, development cost charges may be applied to pay for capital expenses for new development. The legislation indicates that similar to Alberta, the development cost charge cannot be collected again if it has previously been paid for the same development; however if there is further development which results in new capital cost burdens, then the development cost charge can be applied. This appears to indicate that if there is redevelopment in an area which results in additional capital costs, charges may then be applied.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have requested that redevelopment levies be amended to include the rehabilitating or replacing of sanitary or storm sewer or water mains, and street improvements that are required to service a modern building and increased densities of use.

4. Responsibility for Oversize Costs

Background:

The *MGA* provides municipalities with the ability to require, through agreement, that applicants for subdivision or development permits construct or pay for improvements which are larger than what is required for the proposed development (e.g., larger capacity wastewater systems). This helps to ensure that if further development occurs, the installed improvements will be able to accommodate the increase in usage by the new development. Once this future development occurs, money is collected through levies from the new development, and the monies that had been previously collected for over-sizing are then refunded proportionately to the first developer, with interest. In areas undergoing rapid growth this may not be an issue, but if future development does not occur for several years, developers may carry the over-sizing costs for a significant amount of time.

Cross-jurisdictional Research:

- In Nova Scotia, municipalities can impose a one-time charge for over-sized sewer and draining to recover additional costs incurred by the municipality. Charges may be chargeable in proportion to frontage, in proportion to area, in proportion to the assessment of the respective properties fronting on the street or according to another plan or method set out in the levy bylaw.

5. Community Revitalization Levy Areas

Background:

A community revitalization levy (CRL) area is established by provincial legislation and local bylaw for the purpose of raising funds for infrastructure and other costs associated with redeveloping the designated area. When the *MGA* was amended to include CRLs, the intent was to assist municipalities in developing underdeveloped areas where, without the incentive of a levy, new development would not occur. A typical example would be a contaminated site that needs some remediation so that redevelopment can occur. However, specific criteria for establishing a CRL (i.e. for identifying an underdeveloped area) are currently not included in the legislation.

Cross-jurisdictional Research:

- Manitoba's *Community Revitalization Tax Increment Financing Legislation* stipulates that the Lieutenant Governor in Council can designate property as a community revitalization property if it is satisfied that significant improvements to the property are to occur; and it is in the public interest that the improvements be made.
- Ontario's *Tax Increment Financing legislation* defines an eligible project as:
  - the construction of municipal infrastructure or amenities to assist in,
    - the redevelopment or intensification of previously developed areas, or
    - the development of an urban growth centre identified in a growth plan under the *Places to Grow Act,*
  - the environmental remediation of land in a previously developed area, or
  - the construction of a municipal public transit facility.

- In several US states (e.g. Oregon, Wisconsin, Illinois, and Colorado), in order to be eligible for a CRL-type incentive, the legislation indicates that a municipality must demonstrate the area is "blighted". There is also a test that indicates that without an incentive, no development would occur and no incremental assessment would be available. Furthermore, legislation in these states also specifies detailed criteria about the boundary of a potential area.

Stakeholder and Legislative Amendment Requests:

- Some municipalities, municipal councillors and administrators have indicated that they are unclear about the intent of the CRL and when it is appropriate to apply.

6. Fees

Background:

Municipalities have the ability under the *MGA* to determine and set fees through their bylaws. The *MGA* does not set maximum limits on municipal fees for services, nor does it require that the amount collected cover the full cost of providing the service. In some instances, this may mean that the full cost is not being recovered through fees and that the entire population of the municipality is subsidizing the cost of providing a service.[2]

Cross-jurisdictional Research:

- In Ontario, the Minister has the power to create regulations with respect to fees and charges that are being charged by municipalities. For example, a regulation can be created which stipulates that a municipality does not have the power to impose fees or charges for services or activities, for costs payable for services or activities, for use of municipal property or on the persons that are prescribed in the regulation.
- In the 1998 Eurig Estate case (File No. 25866), the Supreme Court of Canada issued a decision regarding the probate fees that were charged by Province of Ontario. In its decision it stated that "the charge for users for the relevant service must have some reasonable relationship to the cost of the provision of that service".

Stakeholder and Legislative Amendment Requests:

- Municipal Affairs has received requests from citizens and industry to amend the *MGA* to clarify broader authority for Minister to regulate all types of planning fees and to include a reference to "reasonable" in the establishment and charging of fees.

7. Franchise Fees[3]

Background

Recently, a number of issues have been raised respecting Franchise Fees. Franchise fees are paid by utility providers and the costs are typically passed onto the consumer. The calculation can either be amount per usage or flat fee and this has impacts upon the end customer.

[2] Fees are also discussed within the Municipal Revenue Sources Paper.
[3] Franchise Fees are also discussed within the Municipal Revenue Sources Paper.

Stakeholder and Legislative Amendment requests

- Industry has expressed concerns about how municipal franchise fees are formulated (e.g. should local councils be allowed to set up a franchise fee model or should some other organization oversee the process).

Discussion Questions

1. Should the *MGA* include standards or criteria surrounding the appropriateness of collecting levies? Why or why not?

2. Should the *MGA* consider alternative methods to pay for the cost of new development? If so, what other methods?
    a) Who should be responsible for paying for the cost of new development?
    b) Is the current list of uses that levies fund appropriate? Why or why not?

3. Is the current off-site levy bylaw-making process appropriate? Why or why not?
    a) Is the current off-site levy calculation process transparent and open? If not, what improvements should be made?
    b) Is the current process for resolving off-site levy issues (e.g. bringing challenges before the courts) appropriate for hearing disputes related to the calculation of off-site levies? Why or why not?

4. Is it appropriate for the *MGA* to allow for the collection of levies (redevelopment or off-site) for core infrastructure upgrades when an area is undergoing redevelopment? Why or why not?
    a) What criteria should be developed for these levies to be collected?

5. Who should be responsible for the costs of over-sizing infrastructure for future growth in a municipality? Why?
    a) Should there be any limits on the amount that may be required? Why or why not?

6. Should the criteria for establishing a CRL area be set out in the *MGA* (e.g. circumstances, net benefit, need for incentives, timing)? Why or why not?

7. Should the *MGA* include standards or criteria surrounding the appropriateness of collecting fees? Why or why not?
    a) Should there be limits on what fees can be charged and how much? Why or why not?

8. How should municipal franchise fees be calculated?