

MGA Review Discussion Paper

Municipal Governance



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*; *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 Council's roles and duties as prescribed under 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

Municipal Governance

The focus of this paper is on how a council governs a municipality and the legal framework in place which determines their duties and relation with the electorate.

The councillor's role is to make policies and programs, to ensure the powers, duties and functions of the municipality are carried out, and otherwise carry out council responsibilities under the *MGA* and other statutes. Municipal Councils are granted law making authority under the *MGA* with respect to the passing of municipal Bylaws. A requirement of the existing *MGA* governance structure is to provide open and transparent governance, especially in areas such as disclosing financial interests, council salaries, the right of the public to attend council meetings and resident notification requirements. Below are some of the elements that shape a council and its operations:

- *Number of Councillors* – The *MGA* requires a minimum of three council members per municipality and that any changes to this minimum must yield an odd number of councillors. All other decisions regarding the appropriate number of councillors are delegated to municipal councils;
- *Electorate Representation* – A council may set the number of wards for a municipality, establish and adjust councillor ward boundaries, and stipulate how many councillors will represent each ward; and
- *Eligibility/Disqualification* – Councillors are disqualified if they act on matters where they (or a relative) have a financial interest (pecuniary interest), or when they have excessive unexcused absences from council meetings or a conviction for a criminal offence.

Discussion Points

Below are some discussion topics and questions identified through 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 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. Council Representation

Background

The MGA requires a minimum of at least three council members per municipality; all other decisions regarding the appropriate number of councillors, municipal wards, and ward boundaries are delegated to municipal councils. In many cases, the number of elected councillors has not kept pace with changing municipal populations.

Cross Jurisdictional Research

- In Quebec and Newfoundland and Labrador, the number of councillors in a municipality is set by the Province.
- In Ontario, 1% of electors may petition a council to redistrict municipal wards; if council doesn't address the issue, the matter is referred to a tribunal.

2. Councillors and Local Decision-Making Bodies

Background

Councillors currently have the ability to sit on local non-political decision-making bodies. For example, council may form a majority on an assessment review board, or a municipal planning commission. They may also account for 50% of the votes on a Subdivision and Development Appeal Board (SDAB). While this facilitates capacity in small municipalities, it can also increase political influence over administrative decisions, and can create confusion related to the roles and responsibilities of those involved in the governance and decision-making process.

Cross-jurisdictional Research

- In Ontario, councillors may not sit on planning appeal hearings.
- The courts recently found a councillor's membership on an SDAB to introduce an element of bias, and noted that residents were available to sit on the SDAB instead (*Beaverford v Thorhild (County No. 7)*, 2013 ABCA 6).
- In Saskatchewan, councillors may not sit on assessment appeal hearings.

Stakeholder and Legislative Amendment Requests

- Municipal Affairs has received requests to limit who may sit on an assessment review boards to make the process more fair and unbiased and to create a more independent subdivision development appeals process.

3. Transparency

Background

The existing *MGA* strives to provide open and transparent governance, especially in areas such as disclosing financial interests, council salaries, the right of the public to be present at council meetings, and resident notification requirements. Openness and transparency within a governance model help to ensure affected parties have access to information and decisions that affect them. These transparency requirements may also place certain limitations on a council's ability discuss sensitive issues and perform other governance duties privately.

Municipal councillors are responsible for governance and oversight of municipalities. Their existing duties include considering the well-being and interests of the municipality as a whole, developing policies, participating in meetings, respecting confidential information until it is presented at a meeting, and performing other duties set out in the *MGA* and other acts. Some of the more common governance duties performed by municipal councils includes hiring and setting the salary of a Chief Administrative Officer and determining per-diems.

Cross-jurisdictional Research

- In Ontario and Saskatchewan a councillor has the duty to maintain the 'financial integrity' of a municipality. Neither act defines 'financial integrity'.
- Ontario's municipal legislation requires municipalities create a registry of municipal lobbyists and appoint an Integrity Commissioner. The Integrity Commissioner is responsible for independently performing functions assigned by the municipality regarding the municipally set code of conduct and applying municipal procedures, rules and policies governing the ethical behavior of councillors and local board members.
- Manitoba requires municipal borrowing notices identify the projected impact to municipal taxes.

Stakeholder and Legislative Amendment Requests

- Municipal Affairs has received requests for:
 - the Province to conduct random audits of municipalities with respect to their compliance with development laws.
 - that more information, including financial information, be posted to municipal websites.

4. Councillor Disclosure and Consequences

Background

Full disclosure facilitates open and transparent governance models. Councils may pass bylaws that require disclosure of information about each councillor's financial interests and the names of their family members and employers. The optional nature of these bylaws means there are no standards of relationship disclosure across the Province. Furthermore, councillors cannot use their positions to further their own interests, and are prohibited voting on a matters where they, their family or their employer stands to gain financially. However, councillors are not required to disclose interest in a matter if they are absent from the meeting where issues related to that interest are discussed.

Under the *MGA*, councillors may be disqualified from sitting on council for a number of reasons related to: non-disclosure of information, their presence and actions at council meetings and a number of other matters relating to conflicts of interest. If a legally disqualified councillor does not resign, an elector or the council may take legal action. This can be a long and expensive process. Furthermore, in the absence of mandatory minimum disclosure requirements, it may be difficult for electors to know when a councillor should be disqualified due to a conflict of interest.

Cross-jurisdictional Research

- Quebec, BC, Saskatchewan, Newfoundland and Labrador, New Brunswick and Manitoba have mandatory disclosure provisions respecting councillors' financial interests.
- In Ontario, council members must disclose their conflicts of interest whether or not they attend meetings where that conflict of interest would occur.
- A number of US and Australian states are responsible for monitoring and enforcing conflicts of interest rules among municipal councils.
- In *Magder v. Ford*, 2013 ONSC 1842, a councilor sought more than \$100,000 in costs from the elector who brought forth the challenge. While costs were not awarded in this case, the judge allowed for the possibility of a successful challenge in the future by ruling that "in General, costs follow the event, and the successful party can expect to receive costs."

Stakeholder and Legislative Amendment Requests

- Municipal Affairs has received a number of requests to have councillor's duties address conflicts of interest in a broader manner (e.g. outline specific instances when a councillor must abstain from voting or take a leave of absence)
- Municipal Affairs has received individual requests to include provisions in the *MGA* which define a range of conflicts for municipal councillors (e.g. former employers, friends, extended family relations).
- Municipal Affairs has received comments from the public and some municipal councils that it is too expensive to disqualify a councilor through the courts and that other methods should be contemplated.
- Municipal Affairs has received requests that disqualified councillors be barred from running in future elections.

Discussion Questions

1. *In what instances should councillors be able to sit on decision-making and appeal boards such as Municipal Planning Commissions, Subdivision and Development Appeal Board or the Assessment Review Board?*
 - a) *What is the right composition of the members on a board or commission (e.g. no councillors, no more than 50% council representation, 100% council representation etc.)?*
2. *What provincial standards, if any, should be considered for representation by population (e.g. number of voters per councillor or ward)?*
 - a) *How, if at all, should the number of councillors and electoral ward boundaries be determined?*
3. *What, if any, councilor disclosure rules (e.g. conflict of interest) should be included in the MGA?*
4. *How, if at all, should councillor disqualification be addressed in the MGA?*
5. *What, if any, provisions should be considered to help foster municipal transparency (e.g. Municipal Integrity Officer, Code of Conduct for councillors)?*