

MGA Review Discussion Paper

Municipal Powers

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 municipally legislated powers under 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 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 Powers

A municipality is a statutory organization whose powers and capabilities come from legislation and are a delegation of provincial powers. The *MGA* provides municipalities with powers granted in broad terms so they may govern in a manner appropriate to their local circumstances. These broad powers, or ‘Spheres of Jurisdiction’, are complemented with additional specific powers in respect of certain subjects, such as planning, assessment and taxation, and utilities. Unless specified in the *MGA*, municipalities may determine to what extent they will exercise their powers within these ‘Spheres of Jurisdiction’.

Municipalities use these Spheres of Jurisdiction to determine to what extent they will exercise their power to realize the following municipal purposes:

- a) to provide good government;
- b) to provide services, facilities or other things council deems necessary or desirable; and
- c) to develop and maintain safe and viable communities.

Key municipal powers include:

- *Bylaws* – Municipal councils have the power to pass bylaws concerning safety, health, land-use, business, municipal services, municipal finances, and enforcement. If a bylaw is inconsistent with provincial or federal legislation, then the provincial or federal legislation governs to the extent of any inconsistency.
- *Natural person powers* – Municipalities have the capacity, rights, powers, and privileges of a natural person (subject to the limits set out in the *MGA*) and can therefore exercise broad powers that are not explicitly set out in legislation. These powers address daily operational matters such as entering into contracts, acquiring property, and hiring staff.
- *Finance and revenue* – Municipalities are prescribed powers to raise revenue and cover expenditures through a variety of taxes, user charges and fees. This is facilitated by rules and requirements for budgets, assessment and taxation, borrowing and loan bylaws, and by creating certain fees and levies.¹
- *Quasi-judicial powers* – Municipalities are prescribed powers to appoint members to appeal bodies that consider assessment matters and land-use planning.
- *Land-use/Development Powers* – Municipal councils have land-use planning and development powers which are applied through the creation of subdivision and development authorities, municipal planning commissions, statutory plans and the municipality’s land-use bylaw.
- *Special municipal powers* – Municipalities have a range of special powers that relate to expropriation, roads, public utilities, business revitalization zones, hamlets, and provision of municipal services.

There are also limits on municipal powers in regard to land sales, acquiring interests in mines and minerals, controlling for-profit corporations, and investments.

¹ The revenue raising powers of municipalities will be addressed more thoroughly in *MGA* Review discussion papers on Municipal Finance, Municipal Revenue Sources, Taxation and Fees and Levies.

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 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. Municipal Purposes

Background

The *MGA* identifies the purposes of a municipality: to provide good government, to provide necessary or desirable services and facilities, and to develop and maintain safe and viable communities. All municipal powers (e.g., natural person powers) link back to these municipal purposes, and in many instances, these purposes provide direction regarding the application of municipal powers under the Spheres of Jurisdiction.

Cross-jurisdictional Research

- Ontario defines municipal purposes using broader language while applying greater specificity regarding how these purposes are realized or defined for each municipal tier.
- Seven other provinces and territories define municipal purposes in a similar manner to the *MGA*. In six of these jurisdictions the scope varies from directly paralleling language used in Alberta's *MGA* to expanding the scope of purposes to include stewardship of public assets as well as environmental, economic and social well-being.

2. Delegation of Municipal Powers

Background

The *MGA* grants all municipalities the same scope of powers, regardless of size. A council's use of these powers may be influenced by the municipality's resources, including its administrative expertise, population, employment base and tax base. Expectations from citizens, businesses and the Province may pressure municipalities to perform functions which may be more complex than they are able to maintain given their resources. As a result, challenges for some municipalities have developed with respect to the application of municipal powers. Some have suggested that the legislation should contain different provisions for larger and smaller municipalities. While larger communities are requesting greater flexibility in the legislation some smaller municipalities are asking for greater direction in the Act.

Cross-jurisdictional Research

- Municipalities in British Columbia, Ontario and Quebec allocate municipal powers depending on the municipality's tier (e.g. regional or local).
- Five provinces have charter cities in which all or portions of the City's governing system and municipal powers are defined through a municipal charter rather than a provincial act.

Stakeholder and Legislative Amendment requests

- The Province has committed to discussing civic charters with Edmonton and Calgary.
- Environmental groups have requested that municipal powers relating to environmental stewardship (e.g. Environmental Reserve, water body access) should be exercised by the Province, not the local municipality.
- A municipal association has requested broader authority be given to municipalities for the protection of natural areas within municipal boundaries.
- Industry has requested that accredited businesses offering services in multiple municipalities (e.g. home inspection services) be governed by solely by provincial permit requirements rather than both provincial and multiple municipal requirements.
- Requests from smaller municipalities have asked for greater direction and definition in the *MGA* (e.g. application of enforcement powers).

3. Scope of Municipal Powers

Background

The *MGA* contains various powers that municipalities may utilize to facilitate its daily operations (i.e. bylaw-making powers, natural person powers, finance and revenue powers, quasi-judicial powers, and special municipal powers). There are limits on these municipal powers in regard to the transfer of land, the acquisition of interests in mines and minerals, the control of for-profit corporations, and investments. These limits are intended to align municipal powers with the municipal purposes defined in the *MGA*. However, natural person powers, combined with municipal powers granted in broad terms under the *MGA*, could possibly lead to actions unrelated to the municipal purposes set out in the *MGA*.

Cross-jurisdictional Research

- All Canadian jurisdictions place limits on municipal powers. The two most common limitations are:
 - where municipal and provincial authority conflict, provincial authority prevails; and
 - Placing borrowing restrictions on municipalities.

Stakeholder and Legislative Amendment Requests

- Some citizens suggest that municipalities have too many powers and municipal powers should be further curtailed (e.g. limit municipal control over development, have the Province hire all municipal CAOs)
- Some municipalities assert that a broader scope of municipal powers is needed to facilitate daily municipal operations (e.g. alternative revenue raising powers, the ability to cancel restrictive covenants, or the ability create toll roads) and have sent the Province requests regarding the removal of limitations placed on their powers. Some of these include removing or adjusting limitations on:
 - Municipal acquisition of land outside of the municipalities boundaries;
 - Municipal authority over roads and liability during road closures;
 - Debt limits to facilitate short term borrowing and access to financial capital

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Discussion Questions

1. *How should the Municipal Purposes of providing good government, providing services, and developing viable communities be defined?*
 - a) Do municipalities have the powers needed to fulfill these purposes?
2. *What types of powers are most appropriate for each of Alberta's municipal structure types?*
3. *What limitations or additions, if any, should be considered key to municipal powers (e.g. bylaw making powers, natural person powers, revenue raising powers, quasi-judicial powers, land-use/development powers, or special municipal powers)?*

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