

AUMA Submission on the Council Meetings Regulation

Overarching comments

- It will be important for the province to develop a regulation to clarify the definition of what is and is not a meeting, as the additions made in Bill 20 do not provide sufficient clarity.
- Certainty around what constitutes a meeting, coupled with the ability to close the meeting for items that do not necessarily fall within the strict interpretation of the FOIP Act, will provide both municipalities and their communities with greater certainty that they are conducting themselves within the intended confines of the MGA. As it stands now, every municipality is doing something different in order to facilitate some of these council gatherings and discussions, based on their own interpretation of the MGA, or that of their legal counsel.
- Providing clarity around what constitutes a meeting of Council and expansion of when a meeting can be closed, will work toward the goal of both Bill 20 and Bill 21 to enhance municipal accountability.

Definition of Meeting

The regulation could omit any definition of a meeting because a meeting is generally understood to be an organizational meeting, a regular council meeting, a special council meeting, or a council committee meeting. Alternatively, the regulation could define other types of gatherings or situations that constitute a council meeting for which public notice and public attendance requirements would apply.

1. Should a regulation define what gatherings constitute a meeting?

- Yes

2. If the regulation does define meetings to include other gatherings, what types of gatherings should be included?

- The current lack of definition of meeting creates an inflated concern for members of council, who can be chastised by residents for meeting in a coffee shop, especially in smaller municipalities where it is conceivable to achieve quorum without intending to do so. Even councils from larger municipalities could be held to scrutiny if they have quorum in events such as sitting together at convention, going for a meal together, or talking to each other at a public or sporting event.
- Meetings should be defined based on the purpose of the gathering / why they have met together as a group. For instance, a meeting needs to meet the test of whether the discussion materially advances a decision of council (as is done in Ontario). For instance, a meeting could require quorum, a regularly scheduled event, and the presence of materially advancing decision making. Alternatively, the British Columbia “Open Meetings: Best Practices for Local Governments” resource that sets out when “a gathering is less likely a meeting” could be used to develop more formalized legislation as to when a gathering of council members is NOT considered a meeting. In other words, it is not a council meeting if: there is no quorum of board, council or committee members present, the gathering takes place in a location not under the control of the council or board members, it is not a regularly scheduled event, it does not follow formal procedures, no voting occurs or, those in attendance are gathered strictly to receive information or to receive or provide training.
- Types of gatherings that need to be considered as “not meetings” include: training, workshops, and strategic planning sessions, council to council meetings /intermunicipal meetings, meetings of growth management boards, intermunicipal negotiations (e.g. for Intermunicipal Collaboration Frameworks).

Classes of Matters for Closed Meeting

The regulation could omit the prescription of other classes of matters for which a meeting may be closed to the public. Alternatively, the regulation could set out one or matters such as training sessions or strategic planning sessions for which a meeting could be closed to the public.

3. Should the regulation prescribe other classes of matters for which a meeting may be closed to the public?

- Yes

4. If the regulation does prescribe other classes of matters for which a meeting may be closed to the public, what matters should be included?

- The MGA and/or the regulations should be expanded to provide the ability to close a meeting for education or training and long-range or strategic planning (these are provisions from Ontario and Saskatchewan, respectively). There should also be clarity provided around intermunicipal planning.
- Currently, FOIP does provide the exception for disclosing information that could harm intergovernmental relations; however, with the intermunicipal collaboration requirements forthcoming, in some cases those discussions could be more of a negotiation than what might be considered a collaborative approach. Therefore, the regulation should provide a clear ability for some of these joint discussions to occur in a closed session.
- Further, Alberta should consider adopting the provision from BC provisions directly in the Community Charter (Section 90) that establish the reasons a meeting can be closed in addition to FOIP, and include: “discussions with municipal officers and employees respecting municipal objectives, measures and progress reports for the purposes of preparing an annual report under section 98.”

Municipal Government Act
Meetings Regulation

Discussion Guide

July 2016

INTRODUCTION	1
MEETINGS LEGISLATION AND REGULATION-MAKING AUTHORITY	1
PURPOSE OF THIS DISCUSSION PAPER	3
MATTERS TO CONSIDER IN THE DEVELOPMENT OF A MEETINGS REGULATION	3
DEFINITION OF MEETING.....	3
CLASSES OF MATTERS FOR CLOSED MEETING	5
SAMPLE REGULATION	6
QUESTIONS ABOUT A MEETINGS REGULATION	6
NEXT STEPS	7
ACKNOWLEDGEMENTS¹	7

INTRODUCTION

The *Municipal Government Act (MGA)* is the law under which all Alberta municipalities are empowered to shape their communities. The *MGA* was introduced in the mid-1990s and was considered a model for municipal legislation in Canada. However, after nearly 20 years, it was determined the *MGA* should be revisited in order to meet the changing needs of Alberta's communities and an extensive review and public consultation took place throughout 2014.

In the spring of 2015, Bill 20 passed by the Legislature, which included issues that have received broad support from the rural and urban municipal associations, the cities of Calgary and Edmonton, and business and industry associations representing key economic sectors. These changes fall under four broad categories:

- Enhancing municipal accountability
- Enabling more efficient municipal operations
- Enhancing municipal viability
- Strengthening municipal and intermunicipal planning

Bill 20 also approved legislative amendments to address emerging issues, as well as housekeeping matters to update minor items such as definitions, references, and terminology.

MEETINGS LEGISLATION AND REGULATION-MAKING AUTHORITY

Once proclaimed, the amendments contained in Bill 20 will provide additional direction and clarification around the use of closed, or in-camera, meetings.

Bill 20 provides the Minister with the authority to make regulations defining "meeting".

1 (1.1) The Minister may make regulations defining "meeting" for the purposes of one or more provisions of this Act and the regulations.

The Bill also provides the Minister with the authority to prescribe classes of matters that may be discussed in a meeting that is closed to the public. These classes are not intended to replace the existing exceptions set out in Division 2 of Part 1 of the *Freedom of Information and Protection of Privacy (FOIP) Act*, but would be in addition to those exceptions.

Bill 20 added the following to the *MGA*:

- 1(3) For the purposes of this Act, a meeting or part of a meeting is considered to be closed to the public if:*
- (a) any members of the public are not permitted to attend the entire meeting or part of the meeting,*
 - (b) the council, committee or other body holding the meeting instructs any member of the public to leave the meeting or part of the meeting, other than for improper conduct, or*

- (c) *the council, committee or other body holding the meeting holds any discussions separate from the public during the meeting or part of the meeting.*

Section 197 is amended

- (a) *in subsection (1) by striking out “subsection (2) or (2.1)” and substituting “subsection (2), (2.01) or (2.1)”;*
- (b) *by adding the following after subsection (2):*
(2.01) *Councils and council committees may close all or part of their meetings to the public if a matter to be discussed is of a class prescribed or otherwise described in the regulations under subsection (7).*
- (c) *in subsection (3) by adding “of a council or council committee” after “a meeting”;*
- (d) *by adding the following after subsection (3):*
(4) *Before closing all or any part of a meeting to the public, a council or council committee must by resolution approve*
(a) *the part of the meeting that is to be closed, and*
(b) *the basis on which, under an exception to disclosure in Division 2 of Part 1 of the Freedom of Information and Protection of Privacy Act or under the regulations under subsection (7), the part of the meeting is to be closed.*
(5) *After the closed meeting discussions are completed, any members of the public who are present outside the meeting room must be notified that the rest of the meeting is now open to the public, and a reasonable amount of time must be given for those members of the public to return to the meeting before it continues.*
(6) *Where a council or council committee closes all or part of a meeting to the public, the council or council committee may allow one or more other persons to attend, as it considers appropriate, and the minutes of the meeting must record the names of those persons and the reasons for allowing them to attend.*
(7) *The Minister may make regulations prescribing or otherwise describing classes of matters for the purposes of subsection (2.01).*

Similar amendments are contained in Bill 20 for meetings of regional services commissions (MGA section 602.08) and for meetings of growth management boards (MGA section 708.041).

These amendments are not yet in effect, but will come into effect when proclaimed later in 2016 or 2017.

The intent of the legislation is to clarify the process around the use of closed meetings, and improve public confidence that these meetings are used only in appropriate circumstances, and to provides the Minister with the authority to, if necessary, define what types of gatherings constitute a meeting.

PURPOSE OF THIS DISCUSSION PAPER

This discussion paper has been developed to seek your input into the development of the regulations that may define the use of the term “meetings”, and to establish classes of matters which can be discussed in a closed meeting in addition to the existing exceptions under the FOIP Act. Your comments and observations will be important in ensuring that the new legislation and regulations accomplish their intended objectives.

MATTERS TO CONSIDER IN THE DEVELOPMENT OF A MEETINGS REGULATION

Definition of Meeting

New MGA Section 1 (1.1) provides the Minister with the authority to make regulations defining “meeting” for the purposes of one or more provisions of the *MGA* and regulations.

There is no definition of “meeting” in the *MGA*. In some situations, this can result in uncertainty about what types of gatherings constitute a meeting, and therefore whether the public notice and public attendance requirements should apply in those instances.

Some have expressed concern that councils, or groups of councillors, may discuss municipal matters outside the confines of the council meeting process, and that some councillors may form their opinions on issues outside the forum of council debate. This is a valid concern given the importance that the *MGA* attaches to public attendance at council meetings for the purpose of hearing council debate and the authority that the *MGA* vests in the decisions made by council as a whole.

Several factors can be considered in determining what type of gathering constitutes a council meeting, including:

- The topic of discussion – whether the topic is general in nature, or is a matter within the local government’s jurisdiction.
- The intended outcome of the gathering – whether the gathering was intended only to share or receive information, or to reach a decision.
- The composition of the gathering – whether only some councillors attended the gathering, or all councillors were invited or attended.
- How the gathering is held – whether the gathering was informal, or whether it followed an order of proceeding.
- Where the gathering is held – whether the gathering was held outside of council chambers, or within.

The following guideline is taken from a 2012 special report to the Legislative Assembly of British Columbia by the Ombudsperson titled “Open Meetings: Best Practices for Local Governments¹”, and is helpful in providing some context around the question of what constitutes a meeting:

“A gathering is less likely a meeting if:

- there is no quorum of board, council or committee members present
- the gathering takes place in a location not under the control of the council or board members
- it is not a regularly scheduled event
- it does not follow formal procedures
- no voting occurs and/or
- those in attendance are gathered strictly to receive information or to receive or provide training.

A gathering is more likely a meeting if:

- a quorum of council, board or committee members are present
- it takes place at the council or board’s normal meeting place or in an area completely under the control of the council or board
- it is a regularly scheduled event
- formal procedures are followed
- the attendees hold a vote and/or
- the attendees are discussing matters that would normally form the basis of the council’s business and dealing with the matters in a way that moves them toward the possible application of the council’s authority.”

Although this guideline is helpful, it also illustrates that it is difficult to establish definitive criteria that could be applied in all circumstances to determine if a gathering constitutes a council meeting, and therefore whether the public notice and public attendance requirements should apply.

The linkage established in the *MGA* between council meetings and council actions provides a critical check and balance regarding how councils can make decisions. Section 180 of the *MGA* states that “A council may act only by resolution or bylaw”. Section 181 further states that “A bylaw or resolution of council is not valid unless passed at a council meeting held in public at which there is a quorum present”. As a result of these requirements, council decisions must always be made through the formal council meeting process where public attendance requirements apply, regardless of the process that led up to the decision.

In practice, the expressed concerns about council meetings are more often related to the process that preceded the public debate at the council table. A council shows respect for the council deliberation process and to its citizens by saving wholesome debate and decision making for the council table. Where this respect is not exercised effectively, the public may perceive that the real discussion and decision-making of council occurred in advance behind closed doors.

Municipal legislation in most provinces does not define the term “meeting”. The Ontario Municipal Act defines “meeting” as “any regular, special or other meeting of a council, of a local board or of a committee of either of them.” In the case of the Manitoba Municipal Act, the definition of a meeting is provided to clarify that a public hearing is not considered to be a council meeting.

Classes of Matters for Closed Meeting

New MGA Section 197(7) provides the Minister with the authority to make regulations prescribing or otherwise describing classes of matters for which a meeting may be closed to the public.

The *MGA* requires councils to hold meetings in public unless the matter being discussed is within one of the exceptions to disclosure as outlined in the FOIP Act. Section 197(2) of the *MGA* allows meetings that are closed to the public where the subject matter falls within one of the exceptions to disclosure in Division 2 Part 1 of the FOIP Act. The exceptions include matters where disclosures could be harmful to personal privacy, individual or public safety, law enforcement, intergovernmental relations, or economic or other interests; reveal confidential evaluations, local public body confidences, or advice from officials; or disclose information that is subject to legal privilege.

As a corresponding check and balance to the use of these exceptions, section 197(3) prohibits the passing of a resolution or bylaw at a closed meeting (with the exception of a motion to revert to a public meeting).

Municipalities have indicated that the *MGA* may need to provide additional latitude to deal with items that do not fall under the FOIP Act exceptions.

In other provinces, municipal legislation has specified that meetings may be closed to the public if the purpose of the meeting is for education or training and no matters are dealt with in a way that materially advances the decision-making process (e.g., Municipal Act (Ontario) section 239(3.1)). In the Municipalities Act (Saskatchewan), meetings may be closed to the public to discuss long-range or strategic planning (section 120(1)).

Although these exceptions in other provinces’ legislation provide clarity regarding the public attendance requirements, these types of gatherings or sessions might not meet the definition of a meeting discussed in the previous section. Defining an education, training, or strategic planning session as a closed meeting may imply that similar gatherings are also “meetings”, and therefore create further confusion regarding the associated public notice and public attendance requirements for other gatherings that occur outside of scheduled public council or committee meetings.

Bill 20 provides the Minister with the authority to make regulations prescribing or otherwise describing classes of matters for which councils and council committees may close all or part of

their meetings to the public. These classes of matters would be in addition to the existing FOIP Act exceptions which will continue to apply.

Sample Regulation

No regulation is proposed to define “meeting” because a meeting is generally understood to be an organizational meeting, a regular council meeting, a special council meeting, or a council committee meeting as described in Sections 192-195 of the MGA.

Further, no regulation is proposed to identify other matters for which a meeting may be closed, such as councillor training sessions, since these sessions would typically not be understood to be an organizational meeting, a regular council meeting, a special council meeting, or a council committee meeting.

QUESTIONS ABOUT A MEETINGS REGULATION

We would appreciate your responses to the following questions about a Meetings Regulation.

Definition of Meeting

The regulation could omit any definition of a meeting because a meeting is generally understood to be an organizational meeting, a regular council meeting, a special council meeting, or a council committee meeting. Alternatively, the regulation could define other types of gatherings or situations that constitute a council meeting for which public notice and public attendance requirements would apply.

1. **Should a regulation define what gatherings constitute a meeting?** **Yes** **No**
2. **If the regulation does define meetings to include other gatherings, what types of gatherings should be included?**

Classes of Matters for Closed Meeting

The regulation could omit the prescription of other classes of matters for which a meeting may be closed to the public. Alternatively, the regulation could set out one or matters such as training sessions or strategic planning sessions for which a meeting could be closed to the public.

3. **Should the regulation prescribe other classes of matters for which a meeting may be closed to the public?** **Yes** **No**

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- 4. If the regulation does prescribe other classes of matters for which a meeting may be closed to the public, what matters should be included?**

Other

- 5. Are there any other matters that should be addressed in the regulation, or any other changes you would suggest to the sample regulation?**

NEXT STEPS

After Municipal Affairs has concluded engagement on this regulation, feedback will be assessed and taken into consideration when developing the final recommendations to government.

Thank you for providing your comments. Your feedback is very important and will be essential to improving municipal governance, administration and accountability.

ACKNOWLEDGEMENTS¹

Permission was received from the Office of the Ombudsperson (British Columbia) for the use of material from their publication “Open Meetings: Best Practices Guide for Local Governments”.