

Questions and Answers about MGA Amendments

AUMA posed questions to Alberta Municipal Affairs regarding amendments to the *Municipal Government Act*. This document provides their written responses to our questions (July 14, 2016).

Code of Conduct

Will you require a municipal candidate to acknowledge their understanding and commitment to follow code of conduct before nomination papers are filed?

Adherence to a code of conduct will now be legislatively recognized as a basic duty of municipal councillors, similar to consideration of the welfare and interests of the municipality, participating in council meetings, and contributing to policies and programs of the municipality. The province expects all individuals considering candidacy in local elections to be prepared to fulfill these and other responsibilities outlined under the Act. A requirement to acknowledge the specific responsibility for adherence to codes of conduct will also be considered as part of the review of the *Local Authorities Election Act*.

Will you support the appointment of an Integrity Commissioner to oversee the code of conduct requirements and resolve disputes?

Bill 20 established that a council must, by bylaw, establish a code of conduct governing the conduct of councillors, but does not anticipate the appointment of a provincial authority such as an integrity commissioner.

The legislation provides the Minister with the authority to make regulations respecting matters to be addressed within the code of conduct, such as the process for handling complaints, as well as other implementation considerations. AUMA will be asked to provide input this summer on the content of this regulation.

Municipalities are currently enabled to establish their own processes for investigating ethics concerns. The City of Calgary, for instance, recently appointed an Integrity Commissioner for such matters.

Elected Official Training

Will you require elected officials to take mandatory training after their appointment?

Bill 21 proposes a requirement for municipalities to offer orientation training to each councillor following an election, but does not require that councillors accept the training offered. The province encourages municipalities to consider including such a requirement in their code of conduct bylaw.

That said, mandatory completion of training has been a topic of interest to many during the ongoing consultation process. The province will be reviewing the input received over the summer to determine whether or not further legislative amendment is required.

Intermunicipal Collaboration and Planning

Why was infrastructure listed as an optional rather than mandatory component of the Intermunicipal Collaboration Framework?

Both infrastructure and services are expected to be contemplated in the development of Intermunicipal Collaboration Frameworks. In addition to the development of an Intermunicipal Development Plan, the focus is on accounting for the provision of key services, which may necessitate the planning and development of necessary infrastructure. The positioning of infrastructure as a “may” was intended to provide the flexibility for municipalities to determine their local needs and design cost-effective solutions that best address those needs. Based on feedback received during the summer 2016 consultation process, the ministry will consider whether further clarifying amendments are required.

Will the police funding model be resolved as part of this framework so that all municipalities are required to pay for policing?

The police funding model is the responsibility of Alberta Justice and Solicitor General and not enabled via the *Municipal Government Act*. Municipal Affairs is aware of the concerns expressed by municipalities in relation to this funding model and will continue to support Alberta Justice and Solicitor General in addressing these concerns.

How will it be possible for municipalities to submit the collaboration framework within two years when the required Intermunicipal Development Plan is not due until later (amendments say 5 years but ministry verbally confirmed it should be 3 years)?

Intermunicipal Development Plans are required as part of an Intermunicipal Collaboration Framework. The province will harmonize the timing of these documents as we finalize the amendments this fall. Implementation timelines for Intermunicipal Development Plans will be changed to 3 years.

Could the three-year time requirement for the municipal development plan be extended so that municipalities can complete their framework and Intermunicipal Development Plans first?

The province will review the feedback received throughout the consultation process prior to making any final determination regarding this requirement. At present, however, the three year timeframe for the completion of these longer term strategic plans is deemed to be appropriate. The province is committed to working with the municipal associations to develop resources and tools to support municipalities in implementing this requirement.

What are the timeframes for finalizing requirements for the two Growth Management Boards (Capital Region Board and Calgary Regional Partnership)?

The province is committed to working with municipalities in both metropolitan regions over the coming months to confirm the mandate, membership and governance of the Capital Region Board and new Growth Management Board in the Calgary region. Regulations outlining these and other details are expected to be in place by fall 2017.

What additional Growth Management Boards are anticipated?

No additional mandatory Growth Management Boards beyond those required in the Edmonton and Calgary metropolitan regions are anticipated at this time. Municipalities outside of these regions, however, will be required to establish Intermunicipal Collaboration Frameworks. If desired, municipalities outside of the metropolitan areas may form a Growth Management Board on a voluntary basis.

Why do the amendments not reflect proposed changes to municipal and school reserves where consensus had been reached?

Further discussions are required relative to reserve land and the ongoing relationship between municipalities and school boards in meeting the needs of communities. Alberta Education will be working with municipalities and school boards to provide input and advice on these matters. Further amendments will be considered on the basis of these discussions.

How will landowner compensation for conservation reserves be determined and what will be the dispute resolution process?

The draft legislation enables the taking of conservation reserve by a municipality at the time of subdivision. Where this authority is exercised, municipalities are required to compensate the landowner for fair market value of the land at the time of taking. The Land Compensation Board will be responsible for handling any disputes between land owners and municipalities regarding compensation.

Why was the 30 per cent minimum benefit area established for the additional offsite levies given this will significantly reduce their use for most municipalities?

The expansion of the use of offsite levies is based on the province's belief that growth must help fund the increased demands that accompany growth. Within that context, however, we also recognize the need to ensure the equitable distribution of such costs. The inclusion of a benefiting area and threshold helps to ensure this equity. In other words, if a minimum of 30 per cent does not accrue to the new development area, then the services are primarily benefitting the entire municipality and, as such, the entire community should share the responsibility for funding.

Why will offsite levy disputes go to the Municipal Government Board rather than court?

The province received significant input from stakeholders over the course of the MGA review seeking an appeals mechanism for offsite levies beyond the courts. Based on this input, and the new requirements to determine a benefiting area and degrees of benefit in relation to the expanded use of offsite levies, it was determined that such an appeals process was necessary to promote accountability and ensure timely decision-making.

The Municipal Government Board (MGB) is an independent quasi-judicial body that is already established to hear complex land use planning and intermunicipal disputes of a similar nature. As such, it was determined that this would constitute a natural expansion of the Board's scope. MGB decisions are potentially subject to judicial review.

Why are there no provisions for re-collecting levies following significant redevelopment?

The current legislation (section 647) includes provisions respecting redevelopment levies in a redevelopment area that is identified through a municipality's Area Redevelopment Plan. At the development permit stage, a redevelopment levy may be imposed, collected and used for land for a park, school building or new or expanded recreation facility. Bill 21 does not contain any proposed amendments in this area; however the ministry remains open to specific suggestions.

How will the offsets for inclusionary housing be determined and what is the dispute resolution process?

Proposed provisions in Bill 21 enable inclusionary housing and provide regulation making authority to outline additional details regarding implementation. The AUMA and other stakeholders will be invited to participate in discussions to inform the development of this regulation. Matters such as offsets and dispute resolution will be addressed in this process.

Municipal Funding

Why do the amendments not respond to requests to legislate and index core provincial grants to municipalities in the same way that the federal government handles the federal gas tax?

The agreements with municipalities relating to the Municipal Sustainability Initiative, which is the largest core provincial grant to municipalities, are expiring in 2017 and we will therefore be having conversations with municipalities about extending these agreements. This will be a separate process from the MGA amendment process.

Why do the amendments not provide municipalities with greater ability to impose taxes and levies? Would you consider this if it was done at a regional level?

Bill 21 enables the expansion of offsite levies to support public infrastructure such as recreation centres, libraries, fire halls and police stations. As part of the MGA Review, the Municipal Financing Task Team (which included the AUMA) reviewed various other municipal revenue sources and provided a report to government. At that time, a decision was made to maintain the existing structure of municipal funding sources.

Alberta already enables a healthy suite of municipal own-source revenue tools, a number of which are currently underutilized across the province. Municipalities are encouraged to work with their citizens to identify opportunities to better optimize these existing tools to meet the needs of their communities. Additional resource optimization is expected through the creation of Intermunicipal Collaboration Frameworks, where municipalities can share the costs of such services as water, waste, transportation, emergency services and recreation for the benefit of their shared citizens.

Finally, it is recognized that some municipalities may have unique needs that warrant further consideration. The province is committed, for instance, to working with resort communities to identify options to better meet their needs. Likewise, many of the potential new tools examined demonstrate value for larger cities only as they tend to require large populations for revenue generation and involve significant administrative complexity.

Municipally Controlled Corporations

Will the province consider a similar process for Regional Service Commissions whereby they would not require ministerial approval?

At present, no specific amendment is being contemplated to eliminate the requirement for ministerial authorization of Regional Services Commissions. However, the province remains open to any and all input regarding the improvement of our processes, including those related to Regional Service Commissions.

Ombudsman

Why was an Ombudsman deemed necessary and what is their role?

Although most municipalities respect and comply with legislated obligations, the ministry receives ongoing indications through complaint letters, phone calls, and petitions that a number of municipalities may at times not meet their legislated obligations to citizens and enterprises. A citizen can apply to the court for satisfaction on any matter, but the process can be lengthy and costly. Alternatively, electors can petition for an audit, inquiry, or inspection, but this can also be a lengthy process, necessitates substantial public support, and is generally broad in scope.

Under Alberta's *Ombudsman Act*, the Ombudsman responds to complaints of unfair treatment by provincial government authorities, the patient concerns resolution process of Alberta Health Services, and designated professional organizations under the *Health Professions Act*, *Regulated Accounting Profession Act*, *Regulated Forestry Profession Act*, *Veterinary Profession Act* and the *Agrology Profession Act*. The amendment contained in Bill 21 will extend the existing mandate of the Ombudsman to include municipalities.

The Ombudsman protects the rights of Albertans to be treated fairly in the provision of public services by promoting standards of fairness. The office is a complaint mechanism of last resort. If rights of review or appeal or other remedies were available but were not exercised (e.g. subdivision and development appeals processes), the Ombudsman may decide to refuse to investigate the complaint.

The Ombudsman has the authority to make recommendations, including corrective action, if an investigation reveals unfairness. The Minister will also have the authority to act upon the recommendations of the Ombudsman, which may involve the issuance of directives for corrective action and/or the initiation of a more fulsome inspection.

The Ombudsman will not have an impact on the democratic operation of a municipal council.

How will municipalities be advised about the complaints submitted to the Ombudsman and the results?

If the Ombudsman approves a complaint for investigation, a letter is sent informing the appropriate administrative head of an authority of the Ombudsman's decision to investigate. The letter of complaint is provided with a request for a detailed response from the authority.

Once a reply has been received, an Ombudsman investigator gathers additional information to enable the Ombudsman to decide whether to support the complaint. If, after a thorough investigation the Ombudsman decides a complaint is supported, the objective is to make recommendations as to a fair and reasonable resolution to the complaint.

The Ombudsman also files an annual report in the legislature which includes statistics on the complaints received.

Will you agree to review the outcomes of the Ombudsman function in three years to make sure that this process is cost-beneficial and is working efficiently?

As a new process, the Government of Alberta is committed to monitor the effectiveness of the change and ensure that the intended objectives are being achieved.

Preamble

Why did the Preamble not include a requirement for municipal engagement on decisions that impact us?

The proposed preamble was incorporated to set the overall context and tone of the legislation, and recognizes the criticality of ongoing collaboration between the province and municipalities. As we have demonstrated throughout the course of the MGA review, the province is committed to engaging municipalities and other stakeholders in the ongoing evolution of our policy and legislative framework, and in identifying and developing supports to help promote municipal sustainability across Alberta. A legislative requirement of this nature was therefore deemed unnecessary.

Property Assessment and Taxation

Will the province consider exemptions to the properties covered by the 5:1 ratio between residential and non-residential rates (e.g., for brownfield properties)?

The proposed 5:1 ratio is between the highest municipal non-residential tax rate and the lowest municipal residential tax rate. The ratio calculation will exclude tax rates used to pay requisitions (e.g. libraries) or those contained within an annexation order. Other exemptions will not likely be considered, however, the proposed changes to the Act include the ability for councils to levy different property municipal tax rates on specific sub-classes of non-residential property. The tax rates for the non-residential sub-classes will be required to meet the 5:1 ratio. Municipal Affairs will work with stakeholders to define the sub-classes ("splits"), with technical discussions expected to occur in September. An additional proposed change would allow municipalities to reduce the property taxes for brownfield properties for multiple years. This ability will not be subject to the 5:1 ratio.

How long of a grace period will you give to municipalities who currently exceed the 5:1 ratio and are grandfathered from immediate compliance?

No time limit is currently contemplated in the legislation. During the Summer Tour many comments were made about requiring outlier municipalities that exceed the 5:1 ratio to move towards it within a specified period of time. Municipal Affairs is considering this feedback.

How much autonomy will municipalities have in determining the non-residential property classes?

It is anticipated that the sub-classes of non-residential property will be prescribed in the regulation. Municipal Affairs will be consulting on the new regulation in the fall of 2016.

Why was centralized industrial assessment put in place and how will you ensure municipal oversight?

This change was made in response to concerns about inconsistency in industrial property assessment, and concerns about succession planning among industrial assessors. We will work with municipalities to ensure transparency in our processes.

Why was the appeal process changed given this will result in more court actions?

The leave to appeal and appeal stages of the process were removed, and ARB decisions can go directly to judicial review. This change was made to address concerns about the courts ruling on the same issues three times. Municipal Affairs does not anticipate that this will result in a higher volume of court action.

What actions will be taken to ensure that greenhouses and medical marijuana grow ops that are currently classified as agricultural are appropriately taxed?

AAMDC is leading a review on the assessment and taxation of intensive agricultural operations. We intend to consider their recommendations and take the necessary measures to ensure the outcomes of this review include greenhouses. The government is considering the issue of medical marijuana facilities.