

Speak Up! Public Participation and the *Municipal Government Act*

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Public Hearings

Requirement for Public Hearing

- *Municipal Government Act* (the “MGA”) specifies when a public hearing is required



Requirement for Public Hearing

- Road closure bylaw (ss. 22(2))
- Resolution to establish and control or obtain control of a corporation (s. 75.1(3))
- Brownfield tax incentive bylaws (ss. 364.1(4)) or agreements (ss. 364.1(13))
- Clean energy improvement tax bylaw (s. 390.3(5))

Requirement for Public Hearing

- Advertisement bylaws (s. 606.1)
- Sale, lease or disposal of reserve lands (MR, CSR or MSR) lands (ss. 674(1))
- Changes to use or boundaries of environmental reserve (s. 676)
- Adoption or amendment of statutory plans or bylaws (ss. 692(1)) (intermunicipal development plan, municipal development plan, area structure plans, area redevelopment plans and land use bylaw)

Advertising and Notice of Public Hearings

- MGA, ss. 606(2) requires notice of a public hearing to be
 - (a) published at least once a week for 2 consecutive weeks in at least one newspaper or other publication circulating in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held,
 - (b) mailed or delivered to every residence in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held, or
 - (c) given by a method provided for in a bylaw under section 606.1

Advertising and Notice of Public Hearings

- Additional notice requirements for specific types of bylaws:
 - Bylaws relating to reserve land (ss. 674(3))
 - Redistricting bylaws (ss. 692(4) and (5))
- Courts may impose additional notice requirements, not set out in the MGA, as a matter of procedural fairness
 - *Airport Self Storage and RV Centre Ltd v Leduc (City)* (2008 Alberta Court of Queen's Bench)
 - See also *Cantor v. Edmonton (City)* (2009 Alberta Court of Queen's Bench)

Advertising and Notice of Public Hearings

Advertisement Bylaw, MGA s. 606.1

- Authorizes allows council to enact a bylaw to provide for additional advertising methods (ss. 606.1(1))
- Council must be satisfied that method "is likely to bring proposed bylaws, resolutions, meetings, public hearings and other things advertised by that method to the attention of substantially all residents in the area to which the bylaw, resolution or other thing relates or in which the meeting or hearing is to be held." (subsection (2))
- Additional requirements set out in ss. 601.1(3)-(5))

Advertising and Notice of Public Hearings

Notice of Public Hearing

- Must be advertised at least 5 days before the public hearing (ss. 606(5))
- Notice must contain (ss. 606(6)):
 - Statement of general purpose;
 - Address where documents relating to public hearing may be inspected;
 - Date, time and place of public hearing.
- Additional requirements for amendment to a land use bylaw to change the district designation of a parcel of land (ss. 692(4))

Statutory Requirements

- When to hold public hearing
- Hearing procedures
- Abstention from voting



Statutory Requirements

When to Hold Public Hearing

- Before second reading of the bylaw or before Council votes on resolution (ss. 216.4(1))
- May be held during regular or special council meeting (ss. 216.4(1))

Statutory Requirements

Hearing Procedures

- Council may establish procedures by bylaw (MGA ss. 216.4(3))
- Council:
 - (a) must hear any person, group of persons or person representing them who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and
 - (b) may hear any other person who wishes to make representations and who the council agrees to hear.
- As of April 30, 2025, every council must by bylaw provide for public hearings under Part 17 of the MGA to be conducted by electronic means (MGA ss. 199(2.1) and (3.1))

Statutory Requirements

Hearing Procedures

- (5) After considering the representations made to it about a proposed bylaw or resolution at the public hearing and after considering any other matter it considers appropriate, the council may
- (a) pass the bylaw or resolution,
 - (b) make any amendment to the bylaw or resolution it considers necessary and proceed to pass it without further advertisement or hearing, or
 - (c) defeat the bylaw or resolution.
- (MGA, s. 216.4)

Statutory Requirements

Hearing Procedures

(5.1) Unless this Act or another enactment specifies otherwise, a council may hold only one public hearing on each proposed bylaw or resolution, or any part thereof, that considers residential developments or developments with residential and non-residential developments under Part 17.

(MGA, s. 216.4)

Statutory Requirements

Abstention from voting on matter discussed at public hearing

184 When a public hearing on a proposed bylaw or resolution is held, a councillor

- (a) must abstain from voting on the bylaw or resolution if the councillor was absent from all of the public hearing, and
- (b) may abstain from voting on the bylaw or resolution if the councillor was only absent from a part of the public hearing.

Duty of Procedural Fairness

- What is the duty of procedural fairness?
- Case studies



No, I don't discriminate...I treat all my

Duty of Procedural Fairness

- Duty of procedural fairness is fact dependent
- Exercise of Council's legislative functions engages lower duty of procedural fairness; decisions which are "primarily a dispute between two disparate groups" will require a higher duty of procedural fairness
- *Young v. Red Deer County* (2022 Alberta Court of Queen's Bench at paras. 72-77)

Duty of Procedural Fairness

***Keefe v. Edmonton (City)* (2005 Alberta Court of Appeal)**

- Redistricting amendment to land use bylaw
- Residents opposed to redistricting were not given the opportunity to respond to attacks on credibility of residents' experts
- Residents were advised they would be permitted to respond at the continuation of the hearing, but were not due to Council's misunderstanding of its policy

Duty of Procedural Fairness

***Robertson v. Edmonton (City)* (1990 Alberta Court of Queen's Bench)**

- City failed to provide notice of place at which documents could be inspected
- Members of organization advised that there were no limitations on submissions, and no time limitation was advertised
- At the public hearing, Council imposed a 5-minute limit on submissions from the spokesperson for the organization

Duty of Procedural Fairness

***Waste Management of Canada Corporation v. Thorhild (County)* (2008 Alberta Court of Queen's Bench)**

- Prior to election councilor was active participate in concerned citizens group, attended before Council at public hearing regarding proposed redistricting of lands (re: proposed landfill)
- Following election, participated in continuation of same public hearing and vote on redistricting bylaw
- Developer challenge council decision on basis of councilor's alleged bias

Challenges to Public Hearings

- Application to the Court of King's Bench
- Procedure
- Validity relating to public participation
- Reasonableness



Challenges to Public Hearings

Application to the Court of Queen's Bench

536(1) A person may apply to the Court of Queen's Bench for

- (a) a declaration that a bylaw or resolution is invalid, or
- (b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.

Challenges to Public Hearings

- A person may apply at any time for a declaration that a bylaw was invalid if a public hearing was required to be held in respect to the bylaw, and it was not (ss. 538(a)(iii))
- The “limitation period” for bringing challenges on other grounds depends on the basis for the challenge

Challenges to Public Hearings

- Section 539 of the MGA indicates that “no bylaw or resolution may be challenged on the ground that it is unreasonable”
- Reasonableness is not a ground for challenging a bylaw, however it is the applicable standard of review

Challenges to Public Hearings

Absent an express statutory statement, no procedural defect should vitiate ... proceedings unless a real possibility of prejudice can be shown or unless the procedure followed is so devoid of the appearance of fairness that the administration of justice would be brought into disrepute ...
Keefe v Edmonton (City) at para. 29.



Petitions

Petitions

- Part 7 (Public Participation) of *Municipal Government Act*
- Right to petition is statutory; compliance with statutory requirements is mandatory



Sufficiency of Petitions

- A petition is sufficient if it meets the requirements of ss. 222 to 226 of the MGA
- Generally speaking, only electors of a municipality are eligible to be petitioners (MGA s. 222) – see *Local Authorities Election Act*, ss. 47 and 48
- *St. Paul (County) v. St. Paul (County)* (2008 Alberta Court of Queen's Bench)

Sufficiency of Petitions

Number of petitioners

223(1) A petition must be signed by the required number of petitioners.

(2) If requirements for the minimum number of petitioners are not set out under other provisions of this or any other enactment then, to be sufficient, the petition must be signed,

(a) in the case of a municipality other than a summer village, by electors of the municipality equal in number to at least 10% of the population, and

(b) in the case of a summer village, by a number of the electors of the summer village equal to at least 20% of the number of summer village residences in the summer village.

Sufficiency of Petitions

Other Requirements for a Petition (MGA s. 224)

- Must consist of one or more pages, each of which must contain an identical statement of the purpose of the petition
- Must include the following for each petitioner:
 - (a) the printed surname and printed given names or initials of the petitioner,
 - (b) the petitioner's signature,
 - (c) the street address of the petitioner or the legal description of the land on which the petitioner lives,
 - (c.1) the petitioner's telephone number or e-mail address, if any, and
 - (d) the date on which the petitioner signs the petition.

Sufficiency of Petitions

Other Requirements for a Petition (MGA s. 224)

- Each signature must be witnessed by an adult person who must:
 - (a) sign opposite the signature of the petitioner, and
 - (b) take an affidavit that to the best of the person's knowledge the signatures witnessed are those of persons entitled to sign the petition.
- Affidavits must be attached to the petition
- Petition must include a signed statement of a person stating that they are the representative of the petitions and that the municipality can direct inquiries about the petition to the representative

Sufficiency of Petitions

Counting Petitioners (MGA s. 225)

- The name of a person must be excluded if:
 - The person's signature is not witnessed or no affidavit is attached to the petition;
 - The person's signature appears on a page of the petition that does not have the same purpose statement that is contained on all the other pages of the petition;
 - The person's printed name is not included or is incorrect;
 - The person's street address or legal description of land is not included or is incorrect;
 - The date on which the person signed the petition is not stated;
 - When a petition is restricted to certain persons, a person who is not one of those persons or whose qualification as one of those persons is not, or is incorrectly, described or set out, or;
 - The signed the petition more than 60 days before the date on which the petition was filed with the chief administrative officer

Sufficiency of Petitions

Campbell v. Red Deer County (2004 Alberta Court of Queen's Bench)

- Numerous petitioners failed to include their street address or legal description as required by s. 224(2)(c) of the MGA
- Court held these were not curable minor irregularities
- Not a minor irregularity if requires CAO to take additional steps to verify signatures

Babiuk v. Calgary (1992 Alberta Court of King's Bench)

- The absence of the signed statement by a representative required by s. 224(4) of the MGA will invalidate the whole petition
- Failure to comply with the mandatory statutory requirement in s. 224(4) of the MGA does not constitute a minor irregularity curable by the court

Sufficiency of Petitions

Burnco Rock Products Ltd. v. Rocky View (Municipal District No. 44) (1995 Alberta Court of King's Bench)

- Some lines of the petition had two names listed together with only one land description
- Court held that putting two names per line (e.g. John & Mary Smith) was a minor irregularity (i.e. curable by the court)

Round v. McGonigle (1981 Alberta Court of Appeal)

- Use of ditto marks to indicate postal address or occupation is acceptable where the intent in using them is obvious

Sufficiency of Petitions

- CAO must make a declaration on whether a petition is sufficient or insufficient within 45 days of the date on which the petition is filed (MGA s. 226)
- If 5000 or more petitioners are necessary to make a petition sufficient, a CAO may use a random statistical sampling method with a 95% confidence level to determine the sufficiency of the petition, instead of counting and checking each petitioner (MGA s. 225(4))

Bylaws Modifying Petition Requirements

- 226.1(1) Despite sections 219 to 226 and 233(2), a council of a municipality may by bylaw do any or all of the following:
- (a) reduce the percentage required under section 223(2)(a) or (b), whichever is applicable, for petitions to the council;
 - (b) allow petitioners to remove their names from petitions to the council by filing a statutory declaration with the chief administrative officer no later than 14 days after the petition is filed with the chief administrative officer;
 - (c) provide for petitions to the council to be signed electronically and modify the requirements in sections 224(2) and (3) and 225(3) to the extent the council considers necessary or appropriate for that purpose;
 - (d) provide for petitions to the council to be filed with the chief administrative officer electronically;
 - (e) extend the time provided in section 233(2) for filing petitions to the council with the chief administrative officer.

Protection of Personal Information in Petitions

Protection of personal information in petitions

- 226.2(1)** Despite any provision of this Act, the *Freedom of Information and Protection of Privacy Act* or any other enactment, personal information contained in a petition
- (a) must not be disclosed to anyone except the chief administrative officer and the chief administrative officer's delegates, if any, and
 - (b) must not be used for any purpose other than validating the petition.
- (2)** Minimal disclosure that occurs inadvertently in the course of collecting signatures to the petition is not a breach of subsection (1).
- (3)** Every page of a petition must contain a statement that the personal information contained in the petition
- (a) will not be disclosed to anyone except the chief administrative officer and the chief administrative officer's delegates, if any, and
 - (b) will not be used for any purpose other than validating the petition.

Petition for a Meeting (MGA s. 229)

- Council must call a meeting with public if they receive a sufficient petition to do so
- Meeting to be within 30 days of CAO's declaration of sufficiency



Petition for Vote on Advertised Bylaws and Resolutions (MGA s. 231)

- Allows for a petition for a vote of electors on a bylaw or resolution that has been proposed by Council
- Courts have held that Council must wait for the expiry of the petition period before passing third reading
- A bylaw under s. 22 (Road Closure), or a bylaw or resolution under Part 17 (Planning and Development) cannot be petitioned



Petition for Vote on Advertised Bylaws and Resolutions (MGA s. 231)

- If vote approves bylaw or resolution, Council must pass it (s. 231(6))
- If vote does not approve bylaw or resolution, cannot be passed (s. 231(7 - 8))
- If sufficient petition not received, Council may pass (s. 231(9))

Petition for Bylaw (MGA s. 232)

- Electors may petition for (a) new bylaw or (b) a bylaw to amend or repeal a bylaw or resolution on any matter within jurisdiction of council under MGA or other enactment
- A petition requesting new bylaw or amendment or repeal of bylaw or resolution made under Part 8, 9, 10 or 17 has no effect

Petition for Bylaw (MGA s. 232)

Maitson v. Edmonton (1995 Alberta Court of Appeal)

- Petition to keep Keillor Road open
- Not a Part 8 bylaw because involves expenditure of money - virtually every decision a municipality makes involves the expenditure of money

Sillito v. Sturgeon (Municipal District) (1990 Alberta Court of Appeal)

- Petition prohibiting a gas plant from carrying on business except on certain lands
- In substance and effect would be a land use bylaw

Petition for Bylaw (MGA s. 232)

Whitcourt (Town) v. Eglinski (2006 Alberta Court of Queen's Bench)

- Municipality wished to build a multi-purpose recreation facility and selected location by resolution combined effect of two petitions received was to require public vote on location
- The court rejected the municipality's argument that every petition having a substantial affect on the capital expenditures of a municipality is invalid as being a petition under Part 8
- While moving the facility will undoubtedly have financial consequences, almost every decision of a municipality will have some effect on its operating or capital budgets
- Subsection 232(2) seeks to protect from petitions the budgetary process itself, and not necessarily all the expenditures of the municipality

Petition for Bylaw (MGA s. 232)

Whitecourt (Town) v. Eglinski (continued)

- There is a distinction between petitions that affect the budgeting process of the municipality (within Part 8), and petitions that merely prohibit the spending of some or all of the money that has been properly budgeted (not within Part 8)
- The overall affect of the statute is that electors can petition votes to stop major capital projects, but they likely cannot force the construction of capital projects that are not provided for in the budget
- Court rejected argument that any petition that relates to the location of a major capital project is on a Part 17 matter
- Court held not petition on a Part 17 matter because petitions do not, in substance, affect planning and development (not engage zoning of site or development permit)

Council's Duty on Receiving Certain Petitions (MGA s. 233)

- Except as per s. 234, s. 233 does not apply to a s. 232 petition requesting amendment or repeal of bylaw that council was required to pass as a result of a vote of electors
- As. 232 petition requesting an amendment or repeal of a bylaw or resolution is not sufficient unless filed with CAO within 60 days of day on which bylaw or resolution was passed
- Within 30 days of day on which CAO declares a s. 232 petition sufficient, council must give first reading to a bylaw dealing with the subject-matter of the petition and any other related matters the council considers necessary
- If not required to advertise then council must (a) within 30 days of first reading pass the bylaw or (b) fix date within 90 days of first reading for a vote of electors on bylaw

Council's Duty on Receiving Certain Petitions (MGA s. 233)

- If required to advertise (a) advertise or (b) fix date within 90 days of first reading for a vote of electors on bylaw
- If advertised and no sufficient petition received under s. 231, council must (a) pass the bylaw within 30 days of time per s. 231(3) or (4), or (b) fix date within 90 days of time per s. 231(3) or (4) for a vote of electors on bylaw
- If advertised and sufficient petition received per s. 231 then council must either (a) not proceed with bylaw, or (b) proceed with bylaw and submit bylaw to a vote of electors within 90 days of CAO declaring petition sufficient.

Council's Duty on Receiving Certain Petitions (MGA s. 233)

***Claresholm (Town of) v. Green* (2003 Alberta Court of Queen's Bench)**

- Petition opposed construction of new library (in substance sought the repeal of a resolution)

***Re By-Law 454, City of Medicine Hat* (1914 Alberta Court of King's Bench)**

- Court had to consider a petition provision in the *Early Closing Act*
- Petition required "all retail mercantile shops" to be closed at certain times
- However, the bylaw passed by council required only certain listed classes of shops to be closed at certain times
- Court held that the bylaw was invalid as "the by-law passed must be such as is exactly asked for in the petition"

Council's Duty on Receiving Certain Petitions (MGA s. 233)

***Maitson v. Edmonton* (1995 Alberta Court of Appeal)**

- The test for whether a petition is sufficiently certain (not vague) is whether council, petitioners and, if necessary, the court can identify with certainty the subject matter of the petition

***Brown v. Calgary* (1980 Alberta Court of Appeal)**

- Petitioners do not have to draft a bylaw at all
- Petitions only petition council about a matter within council's jurisdiction, and council must draft bylaw

Petitions Respecting Public Vote Bylaws

- A bylaw council was required to pass as a result of vote of electors
- Cannot petition under s. 232 for amendment or repeal of a public vote bylaw unless one year passed
- If sufficient petition under s. 232 for amendment or repeal of a public vote bylaw and more than one to 3 years passed then council must within 30 days of CAO declaring petition sufficient (a) give first reading to bylaw dealing with subject-matter of petition and any other related matters council considers necessary, and (b) fix a date within 90 days of first reading for a vote of electors
- If sufficient petition under s. 232 for amendment or repeal of a public vote bylaw and more than 3 but less 10 years since passed then (a) must advertise proposed amendment/repeal, and (b) s. 233(3), (5), (6) and (7) apply
- If sufficient petition under s. 232 requesting amendment or repeal of a public vote bylaw and 10 or more years since passed then sections 233(3) to (7) apply

**Result of a Vote
on a Question
(MGA s. 235)**

- If a bylaw put to a vote under ss. 233 or 234 is approved by a majority of electors then council must pass the bylaw as submitted to the vote within 30 days without any alteration affecting its substance
- If majority of electors do not approve the proposed bylaw then council must not give any further readings and all previous readings are rescinded



Local Authorities Election Act (MGA s. 237)

Form of ballot (Section 44 of LAEA)

- If there is to be a vote on a bylaw or question, the elected authority by resolution must determine the wording to be used on the ballot

Marking of ballots

62 On receiving the ballots that an elector is entitled to receive from a deputy, the elector shall forthwith proceed into the voting compartment provided and shall mark each of the elector's ballots

...

- (b) in the case of a ballot for a bylaw or question, by placing an "X" within the division of the paper marked "for" or "against", or within the division of the paper marked "yes" or "no",

whichever way the elector desires to vote.

Delaying Votes and Moratoriums

Section 238 of MGA

- If petition received within 12 months before general election, can defer vote until election

Section 239 of MGA

- If vote conducted, Council may refuse to receive further petitions on the same or a similar subject, for one year

**Amendments or Repeal of Bylaws or Resolutions
Voted on by Electors (MGA s. 240)**

- A bylaw or resolution that Council was required to pass as a result of a vote may only be amended or repealed if:
 - Another vote approves the amendment or repeal;
 - Three years have passed and the amendment or repeal is advertised; or
 - Ten years have passed
- However, if amendment does not affect the substance of the bylaw or resolution, the amendment may be passed notwithstanding the above

Thank you for
attending

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